

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

THE UNITED STATES OF AMERICA,

plaintiff,

versus

3:21CR42

KEITH RODNEY MOORE,

defendant,

Before: HONORABLE JOHN A. GIBNEY, JR.
United States District Judge

Motions hearing (continued)

October 28, 2022

Richmond, Virginia

GILBERT F. HALASZ
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, VA 23219

APPEARANCES

Shea Matthew Gibbons, Esq.

Erik Sean Siebert, Esq.

Assistant United States Attorneys

for the United States

Laura Jill Koenig, Esq.

Amy L. Austin, Esq.

Assistant Public Defenders

for the defendant

The defendant in his own proper person

1 THE CLERK: Case number 3:21 CR 42.

2 The United States versus Keith Rodney Moore.

3 Mr. Shea Gibbons, Mr. Erik Siebert represent the
4 United States.

5 Ms Laura Koenig and Ms Amy Austin represent the
6 defendant.

7 Are counsel ready to proceed?

8 MR. GIBBONS: United States is ready to proceed.

9 MS KOENIG: Defense is ready, Your Honor.

10 THE COURT: Good morning.

11 Say something in the microphone.

12 MR. GIBBONS: Yes, Your Honor.

13 THE COURT: Making sure both my speakers are
14 working.

15 THE CLERK: They came and fixed it.

16 THE COURT: We are here today for the continuation
17 of the case hearing on the motion to suppress in United
18 States versus Keith Rodney Moore.

19 Good afternoon Mr. Siebert, Mr. Gibbons, Ms
20 Koenig, and Ms Austin, and Mr. Moore.

21 Good to see all of you today. I think where we
22 are is that you are prepared to call your next witness.

23 MS KOENIG: I am, Your Honor.

24 THE COURT: So there is a motion in limine or
25 Daubert motion on Dr. Chiles. And the essential

1 element of the motion is that it is not very helpful to
2 The Court because Dr. Chiles is going to testify about
3 historic patterns in Richmond. So what I will be
4 looking for -- and there is something to be said for
5 that position -- and one of the things that we are
6 looking for today would be evidence that he ties that
7 together. I think in order to rule on the Daubert
8 motion I pretty much have to hear the testimony. So I
9 will hear that and see what Dr. Chiles has to say and
10 what you have to say about tieing that into the present
11 situation in Richmond.

12 MS KOENIG: Thank you, Your Honor.

13 Before we start with that with Dr. Chiles, we
14 have, each side has a hand full of a couple of
15 exhibits.

16 THE COURT: Hand full of a couple exhibits.

17 MS KOENIG: Hand full. I corrected myself. A
18 couple, not really a hand full.

19 THE COURT: I'm sorry to hear your child is ill.

20 MS KOENIG: He is not feeling great, so I don't
21 want to pass anything on to anybody else.

22 The Government has Government's six and seven that
23 should be before The Court.

24 THE COURT: Okay. So what we have here are
25 Government's exhibits six and seven. I have actually

1 five, six and seven here. Five looks like a real old
2 book of some kind.

3 MS KOENIG: I understand that the Government will
4 be trying to introduce exhibit five through Dr. Chiles
5 on cross examination.

6 THE COURT: All right. Are six and seven coming
7 in without objection?

8 MS KOENIG: Correct.

9 THE COURT: Okay. Mr. Gibbons, why don't you tell
10 me what -- Mr. Siebert, either one -- what six and
11 seven are here.

12 MR. GIBBONS: Your Honor, these are maps that are
13 similar to those that we inserted into our motion to
14 exclude, our second motion to exclude Dr. Chiles.
15 These are maps that come from an open source web site
16 that is run by Lexis Nexis, and really what this is,
17 just, this is all of the homicides and manslaughters in
18 the City of Richmond.

19 THE COURT: Okay.

20 MR. GIBBONS: There is -- you can see the
21 precincts kind of outlined. It is A little difficult
22 to see. You will see better on the defense exhibits
23 that shows just the precincts.

24 Government's exhibit six, the dates for this are
25 January 1st, 2018.

1 THE COURT: Through when?

2 MS KOENIG: 12/6/20, the day after the stop at
3 issue.

4 THE COURT: Okay.

5 MR. GIBBONS: And Government's exhibit seven is
6 1/1/99, 1999. That is the first year for which data is
7 available from RPD.

8 THE COURT: Okay.

9 MR. GIBBONS: To 12/6/20 as well.

10 THE COURT: Okay.

11 All right. And what do these black dots show on
12 here?

13 MR. GIBBONS: That is homicide or manslaughter.

14 THE COURT: Okay. Okay.

15 All right. Thank you.

16 MR. GIBBONS: That is all I have, Your Honor.

17 Thank you.

18 MS KOENIG: Then, Your Honor, the parties are also
19 stipulating to defense exhibit 20, which should be
20 before Your Honor, which is the same underlayment of
21 the map that the Government has introduced in exhibit
22 six and seven, but without the dots. It is labeled
23 with the various precinct numbers, three, four, one and
24 two. Clockwise order.

25 THE COURT: All right.

Chiles - direct

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1 So, apparently there is no objection to exhibit
2 20.

3 MR. GIBBONS: No, Your Honor.

4 THE COURT: All right.

5 So I will admit then exhibits, Government's
6 exhibit six and seven and defense exhibit 20. And then
7 I have here also defendant's exhibit 19 which I guess
8 will come in through the professor.

9 MS KOENIG: It is, Your Honor.

10 THE COURT: Okay. All right.

11 Let's get the show on the road.

12 MS KOENIG: At this point I am ready to call
13 Dr. Chiles.

14 THE COURT: All right.

15 THE COURT: Come on up, Dr. Chiles.

16 MARVIN CHILES

17 AFFIRMED AND TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MS KOENIG:

20 Q I do want to confirm that The Court still has the
21 binder of defendant's exhibit that we had provided to
22 The Court at the last hearing or last set of hearings.
23 That could go one through 18, and then have some copies
24 of previously admitted exhibits.

25 THE COURT: All right. I don't have those with me

Chiles - direct

8

1 but we can those. I don't have it here with me, but we
2 will get him started while she is getting those.

3 MS KOENIG: Absolutely, Your Honor.

4 THE COURT: We can move ahead.

5 BY MS KOENIG:

6 Q Can you state your name for the record, please?

7 A Marvin Chiles.

8 Q You can straighten that out. It should catch you.

9 You are good.

10 A Marvin Chile's.

11 Q Very good. Speak clearly. Good to go?

12 A Yes.

13 Q Dr. Chiles, can you spell your name for the
14 record, please?

15 A M-A-R-V-I-N C-H-I-L-E-S.

16 Q Dr. Chiles, do you hold a series of degrees?

17 A Yes.

18 Q Tell us about those.

19 A I have a bachelors, a masters, and a PhD.

20 Q The PhD is what specifically in.

21 A African-American history.

22 Q And where odd you get that from.?

23 A University of Georgia.

24 Q When?

25 A 2020.

1 Q What is your masters in?

2 A American history.

3 Q From where.

4 A James Madison.

5 Q When did you will get that?

6 A 2016.

7 Q What is your current -- what do you do --

8 THE COURT: Let's go the whole way. Where did you
9 get your un-graduate?

10 THE WITNESS: Liberty University.

11 THE COURT: Liberty University. Okay.

12 BY MS KOENIG:

13 Q When did get that?

14 A 2014.

15 THE COURT: And your major?

16 THE WITNESS: Social science educations.

17 THE COURT: Okay. Great. Thank you.

18 BY MS KOENIG:

19 Q What do you to for work now.

20 A Assistant Professor at Old Dominion University.

21 Q Is that a tenure track position?

22 A Yes.

23 Q What are you an assistant professor in?

24 A African-American history.

25 Q Do you have a speciality research area?

1 A Yes. Race, politics in the 20th century, but
2 specifically in Richmond. So I focus on that now.

3 Q How long have you been studying history of race
4 and politics in Richmond?

5 A Since 2014.

6 Q Have you published articles that require
7 specialized knowledge on history of race and politics
8 in Richmond?

9 A Absolutely.

10 Q Are some of those articles listed in your CV?

11 A Yes.

12 MS KOENIG: Your Honor, we have submitted this as
13 a different exhibit nine, Dr. Chiles' CV.

14 THE COURT: Okay.

15 MS KOENIG: Move to admit it at this point.

16 THE COURT: Well, all right.

17 BY MS KOENIG:

18 Q Have you given presentations that required
19 specialized knowledge of race and history in Richmond?

20 A Yes.

21 Q Have you also taught courses at ODU that involve
22 the history of race and politics in Richmond?

23 A Yes.

24 Q Do you hold position of peer-reviewer of articles
25 that others published that require use of your

Chiles - direct

11

1 specialized knowledge of the history race and politics
2 in Richmond?

3 A Yes.

4 MS KOENIG: We move to qualify Dr. Chiles as an
5 expert in the area of history race and politics in
6 Richmond, Your Honor.

7 THE COURT: All right.

8 MR. GIBBONS: No objection, Your Honor.

9 BY MS KOENIG:

10 Q Dr. Chiles, I want to show you -- and Ms Tuck, if
11 I could have access to pulling an exhibit up on the
12 screen, please. And thank you.

13 THE COURT: You are doing what?

14 Q I just want to pull up an exhibit up on the screen
15 that has already been admitted.

16 I guess while we are waiting for that to be pulled
17 up, if you look in that white exhibit book in front of
18 you and flip to the tab that says R 2. It is going to
19 be towards the very end?

20 A Oh.

21 MS KOENIG: Your Honor, this has already been
22 admitted at an earlier hearing in this case. It was
23 previously identified as the racial dot map that the
24 University of Virginia's Weldon Cooper School for
25 Public Service generated using census data from 2010.

1 THE COURT: Which exhibit is it?

2 MS KOENIG: R 2, Your Honor, towards the end of
3 the exhibit book. Here it is on the screen now.

4 THE COURT: R 2.

5 MR. SIEBERT: It is in the exhibit book, Your
6 Honor.

7 THE COURT: What do you mean R 2?

8 MR. SIEBERT: One through 18 is the beginning, and
9 then we have --

10 THE COURT: Oh, okay.

11 Okay, what is Dr. Chiles' resume?

12 MS KOENIG: It is defendant's exhibit nine, Your
13 Honor.

14 THE COURT: Okay. Thank you. Go ahead.

15 BY MS KOENIG:

16 Q Dr. Chiles, we can see blue dots in R 2 reflects
17 white people, right?

18 A Yes.

19 Q And we can see that the green dots in exhibit R 2
20 reflect black people, right?

21 A Yes.

22 Q I want to talk with you now about the history of
23 how those dots got to be where they are.

24 Let's start with where black persons lived in
25 comparison with white persons before slavery ended.

1 A Before slavery ended, so the majority of free
2 black people in Richmond lived in what is now Jackson
3 Ward. And also the Shockoe Slip area. So those are
4 the two places that they lived.

5 The Jackson Ward area was seen as the outskirts,
6 or was the outskirts of Richmond just because the City
7 size was so small geographically. And, yeah, that is
8 where they lived.

9 White people lived pretty much wherever they
10 wanted, but by and large working class, middle class
11 white people lived in the near west end or what is
12 today the near west end, Oregon Hill area, Carillon,
13 area. And, yeah, right. Live in the southern part of
14 Richmond, so, yes, they pretty much lived segregated
15 lives before slavery ended.

16 THE COURT: And in those days the southern side of
17 the river was part of the City.

18 THE WITNESS: No, no, not below the river towards
19 Manchester. That was a different place. That got
20 annexed later on. But the southern end going westward.
21 So near the northern part where nowadays Jackson Ward
22 is, out going kind of east is where black people lived.
23 They were, they lived at, they lived in those places
24 primarily because of insurrection laws that had been
25 passed in the early 18 hundreds, really in response to

1 Gabriel's Rebellion. And so whites were afraid, many
2 of them were afraid if they associated with free blacks
3 in any way, and slaves, in any that suggested that they
4 were, that they were warm to each other, that I could
5 be accused of helping to insight insurrection.

6 So, white and blacks primarily lived in separate
7 places in Richmond prior to slavery ending.

8 Q Specifically had Virginia and the City of Richmond
9 passed laws in ordinances to order that?

10 A Yes.

11 Q Can you tell us about what the common said law in
12 1806?

13 A Yes. So they passed, they passed laws to, one
14 organize police forces, or what do you call them, not
15 necessarily, law enforcement in general. That was to
16 surveil free slaves and slaves and to just insure that
17 they did not travel throughout the areas without
18 supervision.

19 And, yeah, the Commonwealth of Virginia did. And
20 Richmond itself as a city, they did it later on. But
21 the point was to make sure that black people couldn't
22 roam around free without supervision of whites.

23 Q Did the Richmond City council also pass an
24 ordinance concerning Negroes?

25 A Yes.

1 Q Is that what you were referring to --

2 A Yes.

3 Q -- when you said that you were, they were barred
4 from moving freely?

5 A Yes.

6 Q After the civil war ended in 1865 what started
7 happening in the City of Richmond?

8 A So immediately after, for one, there was a bumper
9 crop of free people, obviously slavery no longer
10 exists, so local police in Richmond began to crack down
11 on free black mobility. So they just started arresting
12 black people indiscriminately, throwing them in what
13 was then called Negro Bullpens, which were just open
14 air cells. People could like walk by and throw stuff
15 at them and taunt them. And the point was to kind of
16 let former slaves know, hey, just because you are free
17 legally, you are not free actually.

18 It got to the point to where blacks, blacks in
19 Richmond wrote letters to President Andrew Johnson
20 actually asking for him to intervene. And surprisingly
21 he did. And kind of ended that practice of just
22 indiscriminately incarcerating free black people for
23 just things like not moving off of the sidewalk when
24 white walk by or not referring to a white person by,
25 you know, Mr. or Mrs. and things like that.

1 So, yes, that happened in the immediate aftermath
2 of the civil war in Richmond. So, yes. Hope that
3 makes sense.

4 Q Did the City also start annexing territory?

5 A Yes. Yes.

6 Q Before we get too far, I want to show you what is
7 marked as defendant's exhibit 19. Do you recognize
8 what is in defendant's exhibit 19?

9 A Yes.

10 Q Can you tell us briefly what this is?

11 A Yes.

12 So, sorry, this is a map of Richmond as a City and
13 how it grows going into 20th century, and annexations
14 they used to grow.

15 Q Did you personally prepare this map?

16 A No.

17 Q Have you reviewed it for its accuracy in terms of
18 the knowledge that you have about the annexation?

19 A Yes. Every map I have seen of Richmond, all of
20 the annexation maps all look like this.

21 Q So is it a fair and accurate representation of
22 what the various annexations looked like over time in
23 Richmond.

24 A Yes.

25 MR. SIEBERT: I move to admit defendant's exhibit

1 19.

2 MR. GIBBONS: No objection.

3 THE COURT: Admitted.

4 BY MS KOENIG:

5 Q So let's talk about annex. Where did the City
6 start annexing territory initially?

7 A Initially, just surrounding -- sorry -- so
8 initially just surrounding the City. So right and
9 left, right, and left and right, east and west, rather.
10 And then they began to expand and further in a circle
11 in essence around the City. That is because the
12 population continued to grow after the civil war. More
13 people are moving to Richmond, black and white. So,
14 yes, the annexing s much territory as possible just to
15 accommodate for the population growth.

16 Q After the civil war did the City of Richmond and
17 the State of Virginia continue to enact laws to enforce
18 racial segregation and say where black people could
19 live or not live?

20 A Yes. So that's one of the biggest issues where
21 the City is growing at that time period was that people
22 were concerned with the races mixing in any way that
23 could suggest equality. And also it was seen as
24 improper for cities to not have more organized growth.

25 So by the early 20th century the Commonwealth of

1 Virginia, as well as the City -- and it wasn't just
2 Richmond in Virginia, it was other places as well --
3 began to pass laws and ordinances to restrict the races
4 from interacting in certain spaces. So where they
5 could live, where they could travel, where they could
6 go. If they did have to share space how they could
7 share that space. So blacks would have this side,
8 whites that would have this side, et cetera, et cetera.

9 Q In 1911 -- well before the State and the City
10 started segregating residences more formally, was there
11 a segregation of transits?

12 A Yes. Segregation of transit, it was more, it was
13 more, it was more so allowed private carriers or
14 carriers that provided public services to do it. In --
15 by 1904 they allowed them to do. So they say, hey, we
16 are encouraging you to begin to segregate because this
17 is something that other states are doing, other
18 localities are doing. And a lot of push back was, a
19 lot of push back with respect from whites and blacks,
20 mostly black people because the segregation would mean
21 they would get worse services.

22 But by 1906 it was mandatory. So if you provided
23 rail cars or street car access you would have to have
24 it on a segregated basis. So separate cars. And then
25 different cars and tracks would go to different sides

1 of town. To just kind of reinforce that, hey, although
2 slavery is no longer here, segregation will be here to
3 replace it.

4 Q So let's talk about where in the City of Richmond
5 that played out. Where did the black cars for transit
6 go in the City of Richmond?

7 A Mainly down town. Down town to the Shockoe Slip
8 area because that is where black people lived. Yes.
9 So mainly down town. What we now see as downtown. And
10 going kind of towards the Jackson Ward area. Because
11 that is where black people lived, and they worked in
12 the interior in the core of the City.

13 And the white cars would go out to what is now
14 like the far west end, not as far as it is today, but
15 the furthest that was west end. Because that was a
16 newly expanded suburban area. Same thing with parts of
17 north side. Up near the Ginter Park area which were
18 numerous suburban street car, or considered to be
19 street car type of areas. So, yes, that is where they
20 would go.

21 Q Were blacks allowed to ride on white cars?

22 A Only if they worked for white families. Or if
23 they had like special passes of some sort. So hey, I
24 am going to go to to this neighborhood or this business
25 on this side of town to go work for this firm or this

1 family. Usually the maids of wealthy white people
2 would get a pass.

3 Also, sometimes workers who would go to work for
4 white businesses in other parts of town, like
5 construction, and things like that. But by and large
6 no, for leisure you are not getting on the white car to
7 go out to the west end. That is just not going to
8 happen.

9 Q By 1911 was there an official segregation law on
10 the books that then officially segregated residential
11 areas in the City of Richmond?

12 A Yes.

13 Q Tell us about that.

14 A So that law came about as a result of middle class
15 black people, one in particular, simply buying property
16 in white neighborhoods. And before some black people
17 would buy property in white neighborhoods and rent them
18 out to white people. So no harm, no foul, right.
19 However, by the time we get to the the 1910s some,
20 thinking of one in particular, bought property in white
21 neighborhoods, and they began to put black renters
22 there.

23 And then also that same person tried to establish
24 a business in a white neighborhood. And there was a
25 push back, John Mitchell is who I am referring to, the

1 newspaper editor, and as a result of that the
2 segregation ordinance, City council brought that into
3 play and eventually enacted it. And the goal was to
4 make sure that blacks and whites resided exclusively in
5 neighborhoods that were already, already a majority of
6 that race, or pre-determined to be a majority of that
7 race. So this neighborhood, for instance, was majority
8 white for the last 40 years. No black person could
9 not -- could not live there.

10 Same thing for whites. Excuse me. Whites going
11 into black neighborhoods. If this neighborhood was
12 black in the last 40 or 50 years whites couldn't just
13 go and live there. They could buy property there.
14 That they could not stop, City Council could not stop,
15 but they could not live there.

16 Q Was that law challenged as unconstitutional?

17 A Yes.

18 Q Was that in the City, Hopkins versus the City of
19 Richmond case?

20 A Yes.

21 Q Tell us that case.

22 A So it was a black woman who was, a black woman and
23 a white man who were arrested for violating that rule
24 because they shared space in the same house in a white
25 part of town. I suspect that they might have been

1 lovers, but they claim they were just room mates.
2 Needless to say a black attorney and a white attorney
3 teamed up to challenge that law on the grounds that it
4 violated the 14th amendment.

5 And they lost. And because they lost that case --
6 and then they lost not just here locally, they also,
7 when they appealed, and because of that the NAACP got
8 involved, which was kind of an upstart organization at
9 the time. And when they did get involved eventually
10 they were able to overturn how the segregation in
11 Richmond from a legal standpoint by late 1920s early
12 1930s.

13 Q Did the Supreme Court specifically outlaw the
14 practice that Virginia and Richmond had enacted in
15 Buchanan versus Royal in 1917?

16 A Yes.

17 Q But did that stop Richmond and Virginia from
18 trying to continue segregating residences?

19 A No, not at all.

20 Q You talked about 1920s, 1930s. Is that the case
21 that we are talk about, Benjamin Deem's case?

22 A Yes.

23 So Benjamin Deems was, I believe, an insurance
24 agent. Don't quote me on that. But he was hired,
25 excuse me, wasn't hired, he was approached by attorneys

1 who tried to overturn segregation originally with
2 Hopkins versus Richmond. They told him to buy a home
3 in a white neighborhood. And then to occupy it. That
4 is what he did. Of course, he was slapped, not
5 slapped, but arrested, fined, and that is when he
6 challenged it in court and eventually he won. So, yes,
7 it was challenged by Benjamin Deems who, again, did it
8 on purpose. The goal was to try to get the law taken
9 off the books.

10 Q Have you talked about these -- have you written
11 about these events?

12 A Yes.

13 Q Specifically, did you write about these events in
14 your article called Down Where the South Begins?

15 A Yes.

16 Q Flip in the exhibit book to defendant's exhibit
17 ten, which is going to be halfway through.

18 A Got it.

19 Q Do you recognize what is in defendant's exhibits
20 ten as an article Down Where the South Begins?

21 A Yes.

22 MR. SIEBERT: Judge, I move to admit defendant's
23 exhibit ten.

24 MR. GIBBONS: No objection; however, we have an
25 ongoing objection to relevance. We hope we get to the

1 recent history quickly, Your Honor.

2 THE COURT: Well, I share your hope.

3 BY MS KOENIG:

4 Q What other steps did the City of Richmond, aside
5 from laws and ordinances, take to enforce residential
6 segregation in the 1930s 1940s?

7 A Yes, a few things. It was for one, a newer
8 emphasis on city planning. So The Greater Richmond
9 Plan and later would be the master plan, these were
10 City plans that were adopted by the City council, then
11 eventually later the Housing Authority, Richmond
12 Housing Authority, which would come about in the 1930s.
13 And their goal was to better organize the City of
14 Richmond like other cities throughout the country. So
15 they did this through two things. One of the main
16 objectives of that was to remove black people from the
17 core of the City. Remove them from downtown area and
18 reserve that space for business interests, and also
19 wealthy white occupancy.

20 Q Where did black families get removed to?

21 A So, yeah, by the World War II era, that would be
22 the east end, so Housing Project Development. That
23 started originally in the 1930s, at least the idea of
24 it started 1930s. And it got off the ground by the
25 1940s. But the Federal Government coming in, and also

1 providing funds and the Richmond Housing Authority,
2 would be the ones who were organizing it on behalf of
3 the City. And yeah, they began to house working class
4 black families, working with under class black families
5 as a response, as a direct result of urban renewal,
6 right. so part of removing people from the core of the
7 City, poor people from the core of the City. Something
8 would have to replace them. Of course it would be
9 business, of course it would be wealthy white
10 occupancy. Another thing would be interstates and
11 highways, these are pathways that could connect middle
12 class people who lived further out in the county or
13 moving further out in the counties. Deprived them of
14 access to downtown areas.

15 Q So black are being moved to the east end of the
16 City.

17 A Yes.

18 Q Whites moved to the west end and suburbs?

19 A Well, so, they are not being moved per se they are
20 being encouraged to go elsewhere, primarily the
21 suburbs, through plans like block busting.

22 Q Let's talk about what that, how they were being
23 encouraged. Were there advertisements that were
24 helpful in that process?

25 A Yes. So newspapers in Richmond, only a few

1 newspapers. There was one major black newspaper, and
2 two major white newspaper. They would print different
3 housing advertisements based upon the neighborhoods.
4 So white neighborhoods, white -- vacant available homes
5 in white neighborhoods would be printed in those
6 newspapers. And the other would be posted in black
7 newspapers.

8 Q At the time Richmond had a black newspaper and had
9 some white newspapers, right?

10 A Yes.

11 Q So advertisements for white houses in white
12 neighborhoods were posted only in the white newspaper?

13 A Yes.

14 Q And the reverse was for black homes in black
15 neighborhoods posted in the black newspaper?

16 A Yes.

17 I'm sorry. Go ahead.

18 Q That is okay.

19 Was there a payment, like real estate agents
20 compensated to do things like that?

21 A Yes. So black real estate agents actually worked
22 with white agents to do things like this, for instance.
23 If an area opened up, or let's say a group of real
24 estate guys, we are talking lenders, we are talking
25 people on the ground, they want to fill up parts of

1 Chesterfield and Henrico which were filling up with
2 suburban housing and suburban residency. They would
3 try to encourage whites to relocate out of the City.
4 So they, white real estate agents would pay black ones
5 to send black families in white neighborhoods they
6 wanted to transition. That is what block busting is.
7 So when they sent them there white people would be
8 alarmed. Oh my God, blacks are moving in. And when
9 that happened for sale signs would go up, and whites
10 would leave. And many of them would relocate to
11 Chesterfield and an Henrico, Chesterfield and Henrico
12 primarily. Some would move into south side of, the
13 south side of Richmond. But most would go directly to
14 the suburban counties. And filling those vacant homes
15 in those formally white neighborhoods would be
16 middle -- first, middle class black families and
17 eventually working class black families.

18 THE COURT: Let's see if I have got this straight.

19 The real estate agents would cooperate with each
20 other to sell houses in predominantly white
21 neighborhoods to black people hoping that the white
22 people would move out?

23 THE WITNESS: Yes.

24 THE COURT: And that was a way of developing the
25 suburbs. And then I guess they also made money by

1 selling the houses in white neighborhoods to black
2 people?

3 THE WITNESS: Yes. It was seen as everyone wins.
4 Right.

5 THE COURT: Yes.

6 BY MS KOENIG:

7 Q Did the Federal Government also participate
8 through process of red lining?

9 A Yes.

10 Q Tell us briefly what red lining is.

11 A Briefly the Federal Housing Authority, which was
12 part of, which is a part of the Federal Government, it
13 was a department created by the Federal Government to
14 bring the housing industry back in, and one of the ways
15 was to provide insurance for mortgage loans.

16 THE COURT: To recover from the depression?

17 THE WITNESS: Yes.

18 THE COURT: And then the arrival of people back
19 from World War II.

20 THE WITNESS: Yes. Yes.

21 So one of the ways that the FHA would insure homes
22 was that they needed, they needed to know which
23 neighborhoods or what area of a residential area were
24 safer to insure and those that were not. So they
25 worked with local housing authorities to determine

1 which neighborhoods were safe to invest in, which were
2 ones were not. And there is a box written on this,
3 actually, and other historians that have talked about
4 it. But in urban areas throughout the south, Richmond
5 being one of them, every single black neighborhood was
6 listed as do not invest in, so don't. So mortgage
7 activity in those neighborhoods were next to nil.

8 Whereas white neighborhoods and mixed, what would
9 be considered then would be mixed neighborhoods, so
10 like 20 percent black people lived there and it was
11 mostly white folks would get the majority of the
12 mortgage activity.

13 THE COURT: They would get mortgage insurance --

14 THE WITNESS: Yes.

15 THE COURT: -- which allowed the lenders --

16 THE WITNESS: Yes.

17 THE COURT: -- to make the loans for that area.

18 THE WITNESS: Yes.

19 THE COURT: Otherwise they wouldn't take the risk
20 in an area without mortgage insurance.

21 THE WITNESS: Yes.

22 THE COURT: You said something earlier that I
23 chronologically didn't grasp. You said that part of
24 the removal of African-Americans from white, from the
25 then predominantly African-American neighborhoods,

1 housing projects, was done by the location of highways.
2 I had understood that the bulk of that, at least in
3 Richmond, occurred when they ran interstate 95 through
4 the heart of the African-American community.

5 THE WITNESS: That was one of them.

6 THE COURT: Which was later then seemed like you
7 had chronologically placed that in earlier testimony.

8 THE WITNESS: Yeah, so when people talk about,
9 what is it, interstate 95 and things like that in
10 Richmond, that is kind of the poster child for black
11 removal.

12 THE COURT: What were the earlier roads?

13 THE WITNESS: Earlier roads? I could not tell you
14 the earlier roads. I do know that the Richmond, that
15 the Richmond Housing Authority worked with the Federal
16 Government in 1930s to try to get blacks out of the
17 core of the City. So it wasn't necessarily the roads
18 were the number one thing. It was thee needs to be
19 more, needs to be more segregation in the City to
20 protect; one, the core of the City; and also to
21 maintain the racial integ -- it was called the racial
22 integrity of the City tie. And so --

23 THE COURT: What were the buildings that went up?
24 Tell me what went up in Richmond that occurred after
25 blacks folks were sort of herded into housing projects.

1 Are you talking about Thalhimers, Miller and Rhoads, or
2 what are you talking -- what was it? I haven't -- I am
3 pretty familiar with Richmond.

4 THE WITNESS: Right.

5 THE COURT: And I am having trouble figuring out
6 for myself what it was that they built when they
7 displaced all the African-Americans.

8 THE WITNESS: Yeah. For some places it was roads,
9 others -- well, so, let's say downtown expressway, that
10 was one. I 95 --

11 THE COURT: That didn't happen until the '70s.

12 THE WITNESS: Sorry. Late '60s, early '70s.

13 THE COURT: It just opened up when I moved here.

14 THE WITNESS: Right.

15 And also, I mean, gosh, I could not tell you the
16 name of the buildings that were put up in place of
17 blacks being moved out of the core of the City, but the
18 fact is they were. The goal was to open up the
19 downtown area to -- for better organization, better
20 business, organization of business, business buildings
21 being built.

22 THE COURT: All right.

23 So, again you are kind of losing me here. Well,
24 like, take for instance where the -- I mean, Jackson
25 Ward continues to be a neighborhood.

1 THE WITNESS: Yes.

2 Smaller than it was, but yes.

3 THE COURT: So where did -- what part of it went
4 away? Is it like where the coliseum is and all that?

5 THE WITNESS: Yes. That didn't come into play
6 until '68 I believe when that was built. It was
7 starting early '60s. But, yes, a lot of that was taken
8 away because of the highways in the 1950s. And slum
9 clearance. But, yes, again, the agenda was to remove
10 poor blacks from the core of the City.

11 THE COURT: All right. Go ahead.

12 BY MS KOENIG:

13 Q That's okay.

14 And are we also talking about the Shockoe Slip
15 area that is now fully a business district?

16 A Yes.

17 Q And that entire district was vacated over the
18 decades?

19 A Yes.

20 THE COURT: I mean I used to work down there. All
21 that stuff goes back to the civil war.

22 THE WITNESS: Right.

23 THE COURT: So where did people live down there?

24 THE WITNESS: Where? They lived right along the
25 river down there. That is where they lived. So like

1 in shanties, not like organized neighborhoods.

2 THE COURT: Those houses are no longer there.

3 THE WITNESS: Absolutely not.

4 THE COURT: As near as I can tell there is not --
5 no houses were built to replace them.

6 THE WITNESS: Not at all.

7 THE COURT: Okay.

8 BY MS KOENIG:

9 Q So, after World War II what -- was there a master
10 plan that was created? Mentioned that earlier and I
11 want to talk more about that with you now.

12 A Yes. So the master plan again was to, the master
13 plan, it was a plan created by, I forgot the City
14 Planner's name, but went and shopped it around to
15 various cities.

16 Q In your report you referred to him as Harlan
17 Bartholomew.

18 A That is the guy's name. And so shopped it around.
19 Richmond was one of the ones that adopted it. So the
20 plan was to increase urban real estate value, and to
21 again maintain the, quote unquote, integrity of the
22 City through it's City core.

23 And the best way was to maintain racial
24 segregation and residency. And so the plan was how do
25 you begin to get people from the core of the City out

1 to the outskirts of the City, because by the time
2 that that master plan was adopted Jackson Ward was no
3 longer on the outside of the City, it was center of
4 City now. So there needs to be a way to get people
5 from the downtown area, or near the downtown area and
6 get them closer to the periphery of the City. So that
7 is where essentially you get the emphasis on, okay,
8 let's get poor black people out to the east end,
9 because that was a largely un -- I mean super under
10 developed area at that time.

11 Q Was the goal to merge Richmond with Henrico and
12 Chesterfield County?

13 A Yes. Sort of create a larger metropolitan area.
14 So cities throughout the post World War II had combined
15 City and suburb into one locality; Chicago, Cook
16 County, Davidson, you name it. And so the best -- the
17 goal was to have your, what Lassiter calls island
18 suburbs pay for the urban core. So you have suburban
19 rings on the outskirts, outskirts, like further out and
20 as you get closer to the City you have organized
21 patterns of segregated neighborhoods and black
22 neighborhoods and white neighborhoods. But the further
23 out you go around suburbs, that is where the wealthy
24 people would live, and then some in City core as well.
25 And they would basically pay for the metropolitan

1 growth, the need for new roads, schools, you name it.
2 But the only way that could happen is if you had more
3 racial segregation, because that maintained
4 neighborhood integrity. Because the neighborhoods that
5 were all white had higher property values than those
6 that did not because those were the ones that FHA and
7 other entities would invest, would invest not just
8 mortgages but mortgage insurance and they were
9 considered to be better risk for lending.

10 THE COURT: Isn't it also a fact that when you are
11 doing planning one of the things you try to plan for
12 are areas that don't require public services. So, for
13 instance, that is why you have industrial parks.

14 THE WITNESS: Yes.

15 THE COURT: Industrial parks are places that
16 provide jobs, and places where people live, that have
17 highly valued property, pay a lot of property tax, but
18 does not demand services other than really water and
19 sewer, sewage for the plants.

20 THE WITNESS: Yes.

21 THE COURT: And that is far more productive in
22 paying for the way the City works than having
23 residential neighborhoods. Residential neighborhoods,
24 whether black, white, or anything else, demand immense
25 numbers of services. Schools, for instance.

1 THE WITNESS: Yes.

2 THE COURT: So I don't see -- I don't get what you
3 are saying about how maintaining white neighborhoods
4 allowed the expansion of the City. I think, as I read
5 it one of the main errors of the 1970 zero annexation
6 of the City is the City took predominantly residential
7 areas and had to provide services to them without a
8 concomitant expansion of the non-service demanding tax
9 base.

10 THE WITNESS: That is correct.

11 THE COURT: So they did it to get white voters.
12 But it backfired on them.

13 THE WITNESS: Yes. That is two different things.
14 When I say master plan, when I talk about master
15 plan from the '40s, '40s going into the '50s, all that
16 stuff was baked into the project. It wasn't
17 exclusively, hey, let's all focus on race. Race was
18 part of the grand plan to create --

19 THE COURT: Richmond tried to remain segregated as
20 long as it could.

21 THE WITNESS: Yes.

22 THE COURT: When I came here in '76 it was a
23 highly, highly segregated City. And pretty much
24 remained so. But, obviously it was supported by the
25 Government for many years.

1 Go ahead.

2 BY MS KOENIG:

3 Q So what the matter plan was an idea to merge
4 Richmond and Henrico and Chesterfield?

5 A Yes.

6 Q In part to maintain a white majority by making the
7 City white population larger?

8 A Yes. A hundred percent.

9 Q When talking about moving from one location to
10 another, was it the idea was that a lot of folks, white
11 folks, that lived in the suburbs would come work in the
12 City and then travel back to where they lived at the
13 end of the day?

14 A Yes, yes.

15 THE COURT: When you say merged into one city --

16 THE WITNESS: Yes.

17 THE COURT: -- do you mean actually do away with
18 the --

19 THE WITNESS: Jurisdictional boundaries, yes.

20 THE COURT: So it would be like what they did with
21 the Charlotte.

22 THE WITNESS: Mecklenberg. Absolutely.

23 THE COURT: But, so the idea was that eventually
24 most or all of Henrico, and most or all of northern
25 Chesterfield would become part of the City of Richmond.

1 THE WITNESS: Yes, absolutely. Richmond tried,
2 their first attempt to do that was with Henrico County
3 in 1960s, I want to say 1961, 1962. I could be wrong
4 on the years. But they attempted a merger; however,
5 Henrico County voters by and large voted against it.
6 And ever since, ever since then and also they reached
7 out to Chesterfield County leadership. They were not
8 responsive. Ever since then it was, okay, we are going
9 to see you in annexation court and just bite off chunks
10 of your counties as much as we can until we get what we
11 want, and that is a major metropolitan area. So the
12 goal was to get rid of jurisdiction lines and make what
13 is now Richmond, Henrico and Chesterfield into one
14 larger city. That was the plan.

15 Q And so --

16 THE COURT: That was not, that was not a purely
17 Richmond factor.

18 THE WITNESS: No. No. Sorry.

19 THE COURT: You no longer have Princess Anne
20 County.

21 THE WITNESS: That happened a little bit later.
22 Those two localities, Princess Anne County and, God,
23 Virginia Beach City, they merged willingly. Like that
24 was kind of a marriage.

25 THE COURT: I thought most of those Chesapeake and

1 South Norfolk and Suffolk and Nansemond County, and I
2 guess to a certain extent Newport News and Denbigh
3 County?

4 THE WITNESS: Newport News. Oh, it was Warwick
5 County.

6 THE COURT: Warwick County.

7 THE WITNESS: Yes.

8 THE COURT: They merged voluntarily so their kids
9 wouldn't have to go to City schools. And they would
10 have, maintain a white majority voting.

11 THE WITNESS: Yes, by and large, yes. So, yes.

12 In the Tidewater you have got a lot more willing
13 mergers. In the Richmond area you didn't. The same
14 thing in northern Virginia, places like Fairfax County,
15 to be exact, they were just not on board with merging
16 with Alexandria and other cities that wanted to take
17 parts of them, or take all them if not parts.

18 THE COURT: But in Tidewater they shut out Norfolk
19 and Portsmouth.

20 THE WITNESS: Yes, a hundred percent.

21 THE COURT: To a certain extent Hampton.

22 THE WITNESS: Have you read my book?

23 THE COURT: No, it will shock you, but you talk
24 about history I know about.

25 THE WITNESS: Fair enough. Fair enough.

1 But, no, you are a hundred percent correct. Like,
2 that is spot on.

3 BY MS KOENIG:

4 Q And so when we are talking --

5 THE COURT: Could we just take judicial notice of
6 this stuff and move on?

7 MS KOENIG: We are about to move on, Your Honor.

8 BY MS KOENIG:

9 Q So when we look at -- let's go back to defendant's
10 exhibit 19, which is still on the screen here. We see
11 this dark color that is south, primarily south of the
12 river, James River?

13 A Yes.

14 Q And that seems to be indicated on the map,
15 that that is the area that was annexed by the City of
16 Richmond in 1970s?

17 A Yes.

18 Q Tell us about that annexation. What was the
19 racial make up of this area in that dark sort of
20 burgundy color?

21 A Historians say between 95 and 97 percent white was
22 what the demographics of that area were at the time.
23 And around, between 43 and 45,000 people lived
24 residentially, so, yes, majority white, and majority
25 suburban.

1 Q Once that happened in the '70s in Richmond are
2 there things that are happening in the City about
3 school segregation?

4 A Yes. The City of Richmond tried to backdoor their
5 way into a metropolitan area by combining the schools.
6 Because that was the only way they were going to
7 fulfill the mandate in Brown One and Brown Two. So it
8 kind of served their interests both ways. So for one
9 they get to finally live up to school deseg -- school
10 integration as opposed to desegregation. And also they
11 could combine public service, a public service between
12 Richmond, Chesterfield and Henrico. And that could at
13 least set the precedent for eventually getting that
14 metropolitan area they wanted. But it blew up in their
15 faces.

16 Q What do you mean it blew up in their face?

17 A Chesterfield and Henrico challenged in court, in a
18 few years, and the Fourth Circuit Court of Appeals and
19 eventually the Supreme Court -- well, the Supreme Court
20 was a deadlock -- but the Fourth Circuit Court of
21 Appeals ruled against Richmond trying to use the
22 courts, the federal courts to do their bidding. And
23 the idea that came to, that resonated to the top was
24 the Dillon Rule, right. So that localities cannot use
25 the courts to try to bully other jurisdictions into

1 doing what they want them to do. Jurisdiction has only
2 as many rights as the state government, that the state
3 government gives them, because they are subsidiaries of
4 the state government.

5 Q And when you say the Dillon rule, it is
6 D-I-L-L-O-N rule, right?

7 A Yes.

8 Q That is the law that the legislature passed?

9 A Well, no, it wasn't a law that they passed, it was
10 a, it was a, it was a court decision that was at least
11 1868, so old, so long ago, but it was an idea that
12 was -- that was the main idea that the federal, Fourth
13 Circuit of Appeals used.

14 THE COURT: The Dillon rule says --

15 MS KOENIG: I'm sorry. I misspoke, Your Honor.

16 THE COURT: -- local governments have only those
17 powers expressly given to them by the legislature --

18 THE WITNESS: Yes.

19 THE COURT: -- or necessarily implied.

20 BY MS KOENIG:

21 Q And that is what Judge Merhige relied on and
22 Fourth Circuit relied on to tamp down this plan, right,
23 that Richmond wanted to --

24 A Well, Judge Merhige in Richmond's favor. The
25 Fourth Circuit Court of Appeals ruled against them and

1 it was the Dillon rule that they brought up as, hey,
2 Richmond, you only have as much power as the state
3 gives you. You can't just use the federal courts to
4 bully your way into Chesterfield and Henrico using
5 schools. When Richmond appealed to the Supreme Court
6 they lost. Not lost, but it was a deadlock, one voter
7 abstaining, and that was Justice Powell, who was a
8 Richmond native and served on the school board, served
9 as a superintendent of schools here.

10 THE COURT: Not the superintendent of schools. He
11 was chairman of the school board.

12 THE WITNESS: Okay, that's fine, chairman of the
13 school board, yes. So he abstained and it was a
14 deadlock and at that point the case was closed.

15 BY MS KOENIG:

16 Q And you wrote about all of this in your 2016
17 masters thesis, right?

18 A Yes.

19 THE COURT: What is this book you are talking
20 about? I don't see a published on your curriculum
21 vitae.

22 THE WITNESS: So I have a book that is under
23 contract with the University of Virginia --

24 THE COURT: Courage to Change?

25 THE WITNESS: Yes.

1 THE COURT: Okay. All right.

2 BY MS KOENIG:

3 Q So if you can flip to defendant's exhibit 11.

4 Do you recognize defendant's exhibit 11 as your
5 masters thesis?

6 A Yes. So long ago.

7 MS KOENIG: I move to admit this as defense
8 exhibit 11.

9 MR. GIBBONS: No objection, Your Honor. Same
10 relevance objection.

11 THE COURT: It is kind of hearsay. But I assume
12 he is going to explain this is all true --

13 MS KOENIG: Right.

14 THE COURT: -- and sort of give us the executive
15 summary.

16 BY MS KOENIG:

17 Q Before you wrote your masters thesis, Dr. Chiles,
18 you did a fair amount of research, right?

19 A Yes.

20 Q Interviewing folks, looking at original sources,
21 things like that?

22 A Yes.

23 Q Did a lot of investigation before you wrote this
24 thesis?

25 A Yes. Absolutely.

1 Q What you put in this thesis is the result of your
2 research and findings of your research?

3 A Yes.

4 Q Let's talk about 1977 and the City of Richmond.

5 THE COURT: Are we going to relate this to law
6 enforcement at some point?

7 MS KOENIG: We are. We are getting very close.

8 THE COURT: Let's get even closer.

9 BY MS KOENIG:

10 Q In 1977, Your Honor -- I'm sorry, Dr. Chiles --
11 was there a change about the leadership of the City of
12 Richmond?

13 A Yes.

14 So the leadership as in the City Council was
15 majority black for the first time ever in history.
16 Five black, four white members, nine in sum.

17 Q What happened as a result of the there being a
18 black majority for the first time ever on the City
19 council in Richmond?

20 A Yes. So black majority came in, came into power
21 into a city that was financially hamstrung. Suburban
22 flight had just completely decimated its tax base. Had
23 been doing it for decades up until that point. But the
24 chickens were slowly coming home to roost on that. And
25 they needed to find a way to, needed to find a way to

1 attract suburbanites back to the City. Not just as
2 consumers and workers -- they were already doing
3 that -- but workers more so than consumers. But they
4 needed to bring them back as residents. They tried
5 various urban revitalization plans, the building of a
6 downtown mall, business parks to attract to come back
7 from the suburbs, and to come from out of town. One of
8 the issues they ran into was crime. As something
9 people cited, business leaders more specifically, cited
10 that was like one of the number one issues why they
11 would not invest in Richmond's quote unquote, rebuild
12 when black leadership came into power, so, yes, that
13 was the issue.

14 Q So you talked about the revitalization project.
15 And I think you mentioned Project One?

16 A Yes.

17 THE COURT: Didn't mention it yet. Referred to
18 it, but he didn't mention it.

19 BY MS KOENIG:

20 Q Tell us what Project One was.

21 A It was a City-sponsored endeavor in which they and
22 also a non-profit business coalition which was
23 Richmond, Jesus Christ, Downtown Development Unlimited,
24 DDU. They came together with the City Council to build
25 business infrastructure downtown, so office buildings,

1 parking decks, things like that. And the goal was to
2 attract industry back. One --

3 THE COURT: Richmond Metropolitan Authority is
4 what you are talking about.

5 THE WITNESS: Sorry.

6 THE COURT: Talking about the Richmond
7 Metropolitan Authority.

8 THE WITNESS: No.

9 THE COURT: Build parking decks and all that?

10 THE WITNESS: No. I'm talking about Downtown
11 Development Unlimited. So it was chaired by Andrew
12 Brent, attorney here. And it was a bunch of
13 businessmen who ran it, non-profit group, and their
14 goal was to attract industry back, and the best way to
15 do it was to get the City to invest in building new
16 business infrastructure.

17 BY MS KOENIG:

18 Q So the feedback that they were getting is, we
19 don't want to invest in the City, it is too crime
20 ridden.

21 A So from them, not specifically. It was from the
22 people who, Richmond Renaissance, who built the
23 Downtown Mall. That came along in the mid 1980s. So
24 by the mid 1980s they, as in Richmond Renaissance and
25 the City, they are doing surveys of various

1 neighborhoods. And just to kind of get to understand
2 what they looked like, what is the demographics, and
3 also talking to business leaders. And in some of these
4 surveys they are saying, I mean flat out, hey, crime is
5 biggest issue here. If you want to get more
6 investment, you have to tamp down on the crime problem.

7 Q So what did the City do to do that?

8 A They began creating task force, various task
9 forces that were designed to target high crime areas,
10 or what they think were high crime areas. So, yes, the
11 City police, they would try to hire more officers and
12 to create various departments for them, various groups
13 that would go into high crime areas, mostly the housing
14 projects in the east end. And they would set up shop
15 there, sit there try to catch people doing hand-to-hand
16 deals. Also try to do drug raids. There was what they
17 were targeting mainly drugs and guns is what they were
18 after.

19 Q Did that project have a name?

20 A God. Yes, it did. What is the name? I'm sorry.
21 I'm blanking on it right now.

22 Q Was it called the SNAP Program?

23 A SNAP, Strategic Neighborhood Something Something
24 Something. Yes, but that was one of many. They had
25 various other programs, other programs, but that was

1 the one that City Manager Robert Bobb, that was the one
2 he promoted the most.

3 Q Did that effectively start militarizing the
4 Richmond Police Department on certain neighborhoods in
5 Richmond?

6 A It didn't start it. It didn't start militarizing.
7 It more so cemented it. Militarization started in the
8 1960s with the threat, or let of fear riots coming to
9 Richmond in the aftermath of Martin Luther King dieing.
10 That is when the police really started to get tactical
11 training, started to get anti-riot gear. They were
12 being prepared by City, being funded by City
13 leadership, prepared by police leadership to focus on
14 anti-riot things. So that is when the militarization
15 really started with police. But by the time we get to
16 the 1980s they are taking, they are focusing
17 exclusively on black neighborhoods.

18 Again, I mean, I guess you could you stay
19 militarizing, you know, doing raids.

20 THE COURT: I am not sure what you mean by
21 militarizing.

22 THE WITNESS: So body armor was, they are getting
23 more, what you call it, not military grade gear, but
24 their gear is not just a uniform, a gun, and badge. It
25 is a hard helmet, it is what do you call it --

1 THE COURT: Body armor?

2 THE WITNESS: Yeah, body armor and things of that
3 nature.

4 Yes, so they are getting that stuff started in
5 1960s.

6 Now, how often they were using it, I don't know.
7 But they started getting it in the 1960s, that I do
8 know. And by the 1980s the police are targeting, are
9 targeting crime what is the high crime areas.

10 As a result of the City manager setting out his
11 agenda said, hey, we need to tamp down on crime because
12 it is hurting investment in Richmond.

13 THE COURT: So, and high crime areas happen to be
14 predominantly African-American --

15 THE WITNESS: Yes.

16 THE COURT: -- is that correct?

17 THE WITNESS: Yes. Yes.

18 MS KOENIG: So --

19 THE COURT: Tell me what, how they identified
20 African-American areas as high crime areas.

21 THE WITNESS: How they identify them?

22 THE COURT: Yes.

23 THE WITNESS: 1980s they did neighborhood surveys.
24 They went through, they went through, again, checking
25 to see where people lived, where did they work, how --

1 where did they work, how much they made, things like
2 that. Also, I mean, I would assume they would have
3 some internal data. Again, I cannot confirm this, but
4 I would assume that the police back then had some
5 internal data to which areas were high crime and which
6 areas weren't.

7 I would assume that they had that information.

8 THE COURT: You don't know that?

9 THE WITNESS: I don't know. I don't know from
10 that time period where they got, say, or said, okay, we
11 know these five neighborhoods have the, are engaged the
12 most in drug dealing. Like, I don't know how they
13 would come to that conclusion. I would assume they
14 would get that information from officers on the ground.
15 They would have some sort of internal --

16 BY MS KOENIG:

17 Q We won't ask you to assume, Dr. Chiles --

18 A I'm sorry.

19 Q That's okay.

20 THE COURT: Here is the thing.

21 It's an interesting question that you raise that
22 they were targeting high crime areas. And one of the
23 ways they identify high crime areas was through asking
24 public's opinion.

25 THE WITNESS: Yes.

1 THE COURT: I will tell you, I live in the area
2 that was an annexed in the 1970s.

3 I am a white person. I lived in what was not
4 exclusively, but predominantly, a white area. And many
5 of my neighbors were pretty well angered about being
6 annexed from Chesterfield County into the City. And
7 they felt that there was, they were now opened up to
8 all kinds of crime. And I will tell you that their
9 feelings were based on absolutely zero empirical data.
10 Just what they believed. They said, well, I live in an
11 area with a lot of African-American people, I don't
12 know if they used must less polite terms, and there is
13 going to be crime everywhere. But I don't know whether
14 that was an accurate presumption or not. And neither
15 do you, apparently, because you assumed that they had
16 data that shows that there was more crime in black
17 areas than white.

18 THE WITNESS: I like to think that I am rational
19 in some way.

20 THE COURT: Well, you are rational, but, I mean,
21 why do you think that?

22 BY MS KOENIG:

23 Q So, Dr. Chiles --

24 THE COURT: Tell me, why do you think that? Why
25 do you think -- do you believe there was more crime in

1 black areas of town than white areas of town?

2 THE WITNESS: When? In 1980s?

3 THE COURT: Yes.

4 THE WITNESS: Probably.

5 THE COURT: Why is that?

6 THE WITNESS: Poverty. So history has
7 consequences. That is something that we don't like to
8 admit nowadays. So when people have been segregated,
9 confined, given, or provided, or given, yes, given an
10 inferior education that doesn't allow them to compete
11 in a traditional economy like everyone else, the result
12 is that crime is typically higher in those areas.
13 Again, you don't have to have a PhD from Harvard to
14 know that.

15 THE COURT: Or even from Georgia.

16 THE WITNESS: Or from Georgia. A little step
17 down, right, but yes.

18 THE COURT: Not at all.

19 THE WITNESS: So when you have, so, yes, when you
20 have that happening for generations, literally
21 generations that happens, what is it, crime is going to
22 be the natural result, especially disproportionate to
23 the rest of the City. So, of course, these things are
24 going to happen, more crime, more, higher crime area
25 than say the far west end because people in the east

1 end have systemic poverty going against them for so
2 long. So that is what I would say to answer that
3 question.

4 BY MS KOENIG:

5 Q Do you see, did you see, Dr. Chiles, the long-term
6 impact of removing blacks from certain parts of town
7 and denying them the access to gain mortgages? Did we
8 see that impact play out in the data that you found in
9 the 1970s and 1980s?

10 A Yes. Yes. Absolutely. There is definitely a
11 connection between the two.

12 Q What did you -- what does the data say about
13 mortgage activity in black areas and white areas in
14 Richmond in the 1980s?

15 A Black areas had next to none. They had close to
16 zero mortgage activity whereas white areas had all of
17 it, nearly all of it. We are talking in the 80 percent
18 range of mortgage activity in the Richmond area.

19 So, it wasn't until the mid, the early to mid '80s
20 that local groups in Richmond stopped, real estate
21 community -- so we are talking about mortgage lenders,
22 real estate firms, those who were represented on the
23 board of realtors for much of the 20th century -- to
24 stop engaging in that behavior. And they used the
25 Community Reinvestment Act as a way to do it. So

1 basically threatening to get the Federal Government to
2 pull bank charters and bank mergers, because those
3 firms had been engaging red lining and block busting
4 illegally throughout 29th Century.

5 Q And last year did you publish an article that
6 detailed all of your research and findings on those
7 more recent topics we have been talking about?

8 A Some of them, yes.

9 Q If you can look at defendant's exhibit 12.
10 Do you recognize that article that you have
11 entitled Here We Go Again as the article from 2021?

12 A Yes.

13 Q Is that article the publication of, as you said,
14 some of your findings, not maybe the complete
15 recitation, but some of your findings that we have just
16 discussed on the topics that we are happening in
17 Richmond from 1977 until closer to now?

18 A Yes.

19 MS KOENIG: I move to admit defendant's exhibit
20 12.

21 MR. GIBBONS: No specific objection, but same
22 relevance objection, Your Honor.

23 THE COURT: All right. Admitted.

24 BY MS KOENIG:

25 Q I want to bring your attention back to exhibit R

1 2. That is on the screen.

2 You can look at it. A little fuzzy in terms of
3 color on The Court's monitor. But, where we see these
4 areas of green, and where we see the areas of blue, in
5 your knowledge, with your knowledge of the history of
6 residential segregation in Richmond based on race, is
7 it by happenstance that green dots are where they are
8 and blue dots are where they are?

9 A No.

10 Q What is it the cause of?

11 A Again, the tide of history. So, again, black
12 people were, one pushed to the outside of the City,
13 talking pre-slavery, or pre-end-of-slavery,
14 post-slavery, blacks had been pushed again by local
15 Government and private, and the private real estate
16 industry as well, out to the east end. The blacks who
17 could avoid such fate, especially between 1950s and
18 1970s, began moving to the north side. Those who were
19 more middle class, basically less affluent were moving
20 to the south side. Just as an affordable housing
21 option because of urban renewal plans. From much of
22 that we see that that is still the case today. Again,
23 but, no, there is no, this is not by happenstance that
24 blacks and whites live segregated in Richmond. And
25 where they live, I mean because if you look at the

1 historical patterns, that is where black people were
2 forced to live in the past. So surprise, surprise,
3 black people are still living in there in abundance
4 today.

5 Other things that we haven't discussed, and I did
6 not put in the report about education or the lack
7 thereof, access to the tech-based or soft-skills based
8 economy, all those things play a factor. But by and
9 large blacks and whites were basically forced or coaxed
10 to live in separate sides of the City from the past to
11 the present. And the result of that is in the present.

12 Q I want to talk with you now about the Richmond
13 Police Department and its history of conflict with the
14 back population of Richmond specifically.

15 Briefly move to the historical aspect.

16 A Got you.

17 Q After the revolutionary war what happened with the
18 Richmond Police Department?

19 A Richmond Police Department was effectively turned
20 into a group by the citizenry here in Richmond on
21 focusing on free blacks and focusing on slaves to
22 prevent them from starting insurrections. So there was
23 a huge fear in the early 1800s of slave insurrections.
24 A lot of that came from the history of revolution.
25 Other slave rebellions that happened throughout the

1 country. And so the police were effectively turned on
2 to them. Whereas prior to the revolution police in
3 Richmond, their focus was not on black people hardly at
4 all. There were hardly any free black people right
5 before the revolution. And also, slaves were seen as
6 the problem of their master, they were not the problem
7 of people around them necessarily. So police would
8 focus more on horse thieves, and pig thieves and, you
9 know, Indian nations that would come through.

10 But, yes. So after the revolutionary war police
11 started targeting blacks in Richmond.

12 Q What happened with policing in Richmond after the
13 civil war ended?

14 A After the civil war, I said it before, they began
15 to target black people because; one, they were free;
16 and there was a general anxiety about what that freedom
17 meant. You know, were they going to completely flout
18 tradition and just, again, not to speak to whites the
19 way they were supposed to, were they going to up and
20 move to white areas. Like, what's going to happen. So
21 police in Richmond, again, they doubled down more so on
22 their enforcement of black people because again, there
23 is more free black people available than there were
24 before.

25 Q Did the Richmond Police Department ever -- was it

1 ever accused of voter suppression?

2 A Yes. Police Department in the late 1800s, so this
3 is just around the time of Jim Crow, disfranchisement
4 law, segregation, being formalized. State
5 legislatures, city councils, in places of that nature,
6 voting was really important. So black Richmonders --
7 again this is happening throughout the country,
8 Richmond is no no exception -- black Richmonders tried
9 their best to vote people into office, local, at the
10 local and state level who would not support Jim Crow
11 legislation, would not support disenfranchisement,
12 segregation. And in some cases -- John Mitchell
13 documented this throughout his struggles in the late
14 1800s about black people going to the polls and being
15 chased away by angry white Democratic mobs. In some
16 cases police were out there to help them to do the
17 deed, to basically prevent them from putting their
18 ballot in the ballot box. So, yes. Yes, I will just
19 leave it there.

20 Q When the Richmond Police Department started
21 arresting white people was there a significant outcry
22 about that?

23 A Yes. So when they increased their arrest of white
24 people -- they always arrested white people, but by the
25 progressive era, so we are talking 20th century, the

1 police department in Richmond began to focus more on
2 things like on drug abuse, prostitution, alcoholism.
3 Again, this is something that is not unique to
4 Richmond. When the police department did focus on,
5 focus on incar - excuse me -- focus on those illicit
6 activities, citizens in Richmond got mad. They got mad
7 because they did not want police to target white
8 people. They wanted them to focus, refocus on black
9 people. They even threatened to like not fund the
10 police department. They wanted public officials to
11 stop funding the police in the early 20th century
12 because their focus shifted slightly away from black
13 people.

14 Q All right.

15 When the Richmond Police Department started
16 focusing on arresting whites and away from arresting
17 blacks, whites started vocally calling for defunding
18 the police?

19 A Yes.

20 Q What happened as a result of that public outcry?

21 A The police -- well, one, changing of
22 administration at the City Council level; and then two,
23 the police began to refocus again back on the, yes,
24 they began to refocus back on who they were supposed to
25 be patrolling and surveilling.

1 Q Did this, did you read a dissertation by Lewis --
2 I can't, I don't know how to pronounce his last name
3 but it is spelled C-E-I -- about this?

4 A Yes.

5 Q His dissertation, there are only two dissertations
6 that I have ever found that have, that have talked
7 about Richmond Police and race relations. And that one
8 is by far the most comprehensive. And that is where I
9 am getting this information.

10 Q For the record, that is already in this record in
11 this case as exhibit Z to ECF number 86.

12 THE COURT: All right.

13 MR. SIEBERT: Your Honor, I would object to that
14 being admitted. He didn't draft it, he didn't write
15 it, he didn't check any of the sources on that. How
16 could that be admitted as evidence?

17 MS KOENIG: I wasn't seeking to admit it as
18 evidence in the case. Just referring that that is the
19 dissertation that has already been in record. It is
20 the same one I have posted before.

21 THE COURT: Let me just ask you.

22 This dissertation by Mr. Cei or Cei, Cei or Cei,
23 is that the kind of data on which historians typically
24 rely to reach conclusions about what happened in
25 history?

1 THE WITNESS: Yes. So, historians work with what
2 they have, like in any other set of scholars. So,
3 Mr. Cei or Cei, he had access to data that I don't have
4 access to. I mean, he had police records from, you
5 know, the civil war period, post-civil-war period. I
6 am assuming, and I believe that I -- I am not
7 assuming -- but I read in the dissertation that he got
8 access to those while completing the dissertation in
9 the '70s. Where that information is today I do not
10 know. But historians have to work with what they have.
11 So that is a vetted project. Again, he earned a PhD on
12 it. So there have been some level of validation that
13 the work was accurate for the most part. So yes, the
14 short answer is yes. Historians rely on what we have.

15 Q Is Mr. Cei's dissertation the kind of information
16 and evidence that you would rely on as a historian?

17 A Yes.

18 THE COURT: I don't think the question is whether
19 he would rely on it. The question is whether it is the
20 kind of thing that experts in his area typically rely
21 on.

22 BY MS KOENIG:

23 Q And as a historian and expert in the history of
24 race and politics in Richmond is Mr. Cei's dissertation
25 the kind of evidence that one in that position, an

1 expert in your position, would rely on?

2 A Yes. If I am doing anything related to Richmond,
3 and both Richmond Police and race, and I am trying to
4 get it published, or I am teaching it, right, like I
5 have to rely on what I have. So, yes, I would rely on
6 that dissertation.

7 MS KOENIG: I think then we have met the criteria
8 under Federal Rule of Evidence, I think it is 702, for
9 admission.

10 I neglected to bring my cheat sheet.

11 703, Your Honor. The basis of an expert's opinion
12 testimony, if experts in a particular field would
13 reasonably rely on these kinds of facts or data in
14 forming an opinion on the subject, they need not be
15 admissible for the opinion to be admissible. But the
16 fact or data that would otherwise be admissible, the
17 proponent of the opinion may disclose them, if that
18 would aid the trier of fact in finding that
19 information.

20 THE COURT: All right. Well, you still have not
21 tried to put in Mr. or Dr. Cei's dissertation, but your
22 witness can rely on it.

23 MS KOENIG: Thank you, Your Honor.

24 BY MS KOENIG:

25 Q Dr. Chiles, was there a long resistance within the

1 Richmond Police Department to hiring black police
2 officers?

3 A Yes.

4 Q And did -- was there in the 1960's a proposal to
5 the Richmond Police, to the City of Richmond, to create
6 a police board?

7 A Yes.

8 Q Tell us about that.

9 A So this is something that can be, that can be and
10 has been validated using media sources at the time, so
11 you don't just have to take Dr. Cei's dissertation at
12 the word on this issue. So, for one, black residents
13 had been complaining to local leaders, black leaders,
14 and also to City Government to a lesser extent about
15 things like police brutality and just mistreatment by
16 police officers since the early 20th century. Nothing
17 had come of it. By the 1960's black residents, they
18 proposed the City Council adopt a police review board.
19 This board would be, would hold citizens, it would hold
20 police officers, and the goal was to try to vet police
21 brutality, or just issues between residents, black
22 residents and cops. It was to kind of see where there
23 could be a middle ground. Was there a truth to it, was
24 there no truth at all? The City Council at the time
25 was very resistant to it. They were resistant to it

1 primarily because the police department was a hundred
2 percent in resistance to it. Was every cop against it?
3 Probably not. But at the united front publicly there
4 was no traction for it at all. They were not, they did
5 not want citizen oversight. They didn't want that
6 citizen oversight because that citizen oversight would
7 be majority black. Because those are the people who
8 were doing it. And also the City was trending blacker
9 throughout the '60's as well. So it wouldn't be just a
10 bunch of people from the white west end on the police
11 review board, it would be people from Church Hill on
12 the police review board. And they wanted no part of
13 that.

14 Q We talked about how when the City was becoming
15 blacker.

16 A Yes.

17 Q Certain parts of the City becoming a hundred
18 percent blacker?

19 A Yes, absolutely.

20 Q Did that in many ways relate to the housing
21 project in various parts of the City?

22 A Yes, a hundred percent.

23 Q Were residence of those housing projects almost
24 exclusively black?

25 A Almost exclusively, yes.

1 Q In the 1980s when we talk about the SNAP task
2 force --

3 A Yes.

4 Q -- what effectively happened with the Richmond
5 Police as it relates to the housing projects
6 themselves.

7 A They targeted them. Because those were seen as
8 places where the majority of crime happened. So again,
9 you know, you would have cops who would post up on
10 corners and trying to catch people doing hand-to-hand
11 deals. Try to -- people doing, what is it, selling
12 guns and drugs mainly is basically what that was.

13 Q So is that the time when you start to see that
14 what is happening at the housing projects is the
15 Richmond Police Department just surveilling them?

16 THE COURT: Doing what?

17 MS KOENIG: Just surveilling the housing projects,
18 not responding to active calls, but sitting there
19 waiting, watching.

20 THE WITNESS: Yes.

21 BY MS KOENIG:

22 Q Did these things change when the Richmond Police
23 Department began hiring black officers?

24 A No, not at all.

25 Q You have written in your report a quote that came

1 I think from Mr. Cei's dissertation that said, that a
2 black police captain discussing the Richmond Police
3 Department culture in the late 1980s said, we have a
4 black mayor, a black city manager --

5 MR. GIBBONS: Objection. Hearsay.

6 THE COURT: What is the question?

7 MS KOENIG: That this quote is coming from
8 Mr. Cei's -- Dr. Chiles has just testified that after
9 Richmond started --

10 THE COURT: What was the question?

11 MS KOENIG: The question is, is this in part what
12 he was relying on, this information from Mr. Cei's
13 report in giving that expert testimony.

14 THE COURT: All right.

15 BY MS KOENIG:

16 Q A black assistant city manager and many high
17 ranking black public officials, yet it seems very
18 little has changed?

19 A Yes. So, yes. Yes.

20 THE COURT: Let me just ask you this.

21 Here is what the other side is going to say, and
22 there is some logic to this. A lot of logic maybe.

23 If there is a lot of crime in black areas, why
24 shouldn't they send a lot of police there?

25 THE WITNESS: I can't answer that. I can only

1 answer, only say what the past is telling us.

2 THE COURT: The past is telling us -- what you
3 told me so far is that there were -- is that for
4 reasons that aren't very good the government and the
5 business community forced African-Americans to move
6 into predominantly -- into almost exclusively racially
7 segregated areas.

8 THE WITNESS: Yes.

9 THE COURT: You told me that in your judgment
10 those areas for reasons of history, poverty, lack of
11 education and the like, were breeding grounds for
12 crime.

13 THE WITNESS: Yes.

14 THE COURT: And then you have told me that in
15 order to make people think Richmond was safer they
16 assigned police officers to go there. Well, whatever
17 their motive was, what is wrong with sending police
18 officers to an area that has a lot of crime?

19 THE WITNESS: I can't -- I don't -- I don't have
20 an opinion on that.

21 THE COURT: Okay.

22 Why don't you tell me what is wrong that.

23 MS KOENIG: Do you want me to answer that now,
24 Your Honor?

25 THE COURT: Yes, answer that now. That is really

1 the question the case is about. I accept that based on
2 what he says this stop that we have in this case, and
3 the way the precincts are set up in the City places a
4 lot of police officers in predominantly
5 African-American areas. And your witness has said that
6 for a lot of reasons those areas have higher crime
7 rates than other, than white areas. So --

8 MS KOENIG: I think what we are finding, Judge,
9 Your Honor, is that this -- so the pattern that we see
10 in the green dots and the blue dots in defense exhibit
11 R 2 is not by happenstance. It's not by happenstance
12 and not separated from race that black people in the
13 City of Richmond, many of them, in fact perhaps the
14 majority of them, are forced into poverty and then kept
15 into poverty because of their race. They are then
16 moved from the areas in which they might have been able
17 to claim a property ownership because roads and other
18 buildings, they were deemed to be unsightly, right,
19 need to be moved out of the area, slumps need to be
20 cleared, lose any access to the ability to gain wealth
21 that they have, they are not allowed to get mortgages,
22 and so they are moved to housing projects where they
23 are renters, and so what do you think is going to
24 happen? Right? What do we think is going to happen
25 when we do that? I am not in any way submitting that

1 there are statistics that show that crime is only
2 happening in the areas of the housing projects. It is
3 just that what happens from Dr. Chiles's testimony is
4 we know that the Richmond Police Department just starts
5 setting up in the housing projects.

6 THE COURT: Okay. Here is the thing.

7 But, that -- there is an abhorrent history in
8 Richmond and in Virginia and maybe in our nation at
9 large, of segregation which has both social and
10 educational and economic complexes or effects. And it
11 results in a substantial, a substantially higher crime
12 rate in black areas than in white areas. That seems to
13 be what your witness is testifying to.

14 So, you know, there are people in those areas that
15 are not criminals. And they deserve to live in an area
16 where there is not a lot of crime --

17 MS KOENIG: And I think --

18 THE COURT: -- and they send police officers in
19 there.

20 MS KOENIG: Fair enough. I think so where this is
21 moving, Your Honor, is that where crime area -- if you
22 are here talking about like the possession of a gun and
23 the police targeting someone who has got the gun and
24 they happen to be black, I think that would be a very
25 different scenario than what are facing now, because we

1 are looking at traffic stops --

2 THE COURT: Well, that is the other aspect of it.

3 It seems to me, you know --

4 MS KOENIG: -- because the Government's map

5 showing homicide and manslaughter areas --

6 THE COURT: That may be true with people making

7 left turns.

8 MS KOENIG: It doesn't. When you look at, when

9 you compare those maps to the figures in defense

10 exhibit 2, which is Dr. Costin's report, showing the

11 clusters of black drivers that are stopped throughout

12 the City of Richmond, and the heat map, there are

13 several areas that would not in any way explain just

14 because there are some violent crimes happening in one

15 part of town, why huge amounts of people, black people,

16 are being stopped in traffic stops on border areas

17 where white neighborhoods abut black neighborhoods.

18 That doesn't explain that. There is no --

19 THE COURT: I don't think Mr. Moore's stop was in

20 a border area, was it?

21 MS KOENIG: Well, no, but we are talking about

22 patterns of enforcement, Your Honor, that is what we

23 are talking about here.

24 THE COURT: What do you say about this? Police

25 officers are trained to give people tickets when they

1 see violations of the law. If you for a legitimate
2 reason send a lot of police officers into a high crime
3 area, they are going to see a lot of traffic
4 violations. And then they are going to stop people. I
5 mean, is that -- you have got to prove two things;
6 intent and effect.

7 MS KOENIG: Right.

8 THE COURT: And it is clear to me from the
9 evidence in this case that there is two sets of traffic
10 laws. One for black people, and one for white people.

11 MS KOENIG: Yes.

12 THE COURT: And people, you know, white people
13 forget to renew their license plates all the time. But
14 they don't get stopped for it.

15 MS KOENIG: Right.

16 THE COURT: But that is because, might that not be
17 because they are driving in areas in which there is a
18 lower rate of crime, and therefore there are fewer
19 police officers?

20 MS KOENIG: I think that is where we get, that
21 where the evidence of where the stops are happening is
22 so important. Because we saw from defense exhibit 2
23 that when we have -- first we have no evidence at all
24 that white drivers are less likely to commit traffic
25 infractions than black drivers. Both Dr. Costin said

1 that and Dr. Smith, the Government's expert, didn't
2 disagree with that. He indicated that he had no
3 evidence to that effect.

4 So if we operate on that presumption, which we
5 have to, because that is the evidence in this case,
6 that white drivers and black drivers are presumed to
7 commit traffic infractions at roughly the same rate,
8 and then we look at the blunt statistics that
9 77 percent of all people that the Richmond Police
10 Department stop are black drivers, and then we look at
11 even if we are saying, okay, fine, there is some
12 activities that happens and maybe that explains a
13 little bit more that maybe because there is more
14 surveillance in certain areas, it doesn't explain why
15 more black drivers are stopped in the white part of
16 town. But it just doesn't. There is no way to get
17 around that but to look through the lens of race.

18 THE COURT: I understand what you are saying. I
19 have been sitting up here for 12 years with, you know,
20 dozens if not hundreds of young African-American men
21 who get stopped for stuff that happens all the time in
22 white areas, without a concomitant number of arrests.
23 I'm sorry to disturb your testimony. Go ahead. Sounds
24 like --

25 MS KOENIG: I am pretty much done.

1 THE COURT: You are pretty much done?

2 MS KOENIG: On my direct examination of Dr.
3 Chiles.

4 THE COURT: How is he going to tie this into
5 current police activity?

6 BY MS KOENIG:

7 Q Dr. Chiles is a historian, Your Honor. So,
8 Dr. Chiles, do you have, when -- let's do this.

9 When you, over the course of your research did you
10 contact the Richmond Police Department trying to get
11 ahold of crime statistics?

12 A Yes. Years ago. Not just crime statistics, but
13 correspondences from say the police department and City
14 Council and things that, things of that nature. So
15 just general police records that are available to the,
16 to historians and researchers, yes.

17 Q Did that include more recent time frames than what
18 we have talked about today?

19 A Absolutely.

20 Q Were you able to obtain such information?

21 A No.

22 Q Did anybody give you a reason as to why you
23 couldn't obtain such information?

24 A Yes. I was told, and I do not have the officer's
25 name, but I was told that the Richmond Police

1 Department are not required to keep data of that sort.
2 So they don't, or at least didn't. And I was told to
3 contact the state archives to see if they have
4 anything. So I did and the State Archives had nothing
5 either. Yes. That --

6 THE COURT: What were you asking them for?

7 THE WITNESS: Just any police records that could
8 be available to researchers from the 1980s, 1990s,
9 early 2000s to -- because that is what I focus on in my
10 own research that I publish. I was told we don't have
11 any of that data.

12 THE COURT: You don't have any records about like
13 the number of people they arrest? Is that what you
14 ever saying?

15 THE WITNESS: That is what I was told, yes.

16 I don't have -- we don't have that data, and we
17 are not required to keep it. So you should probably
18 contact the State Archives. So I did, and I struck out
19 there as well.

20 THE COURT: Okay.

21 BY MS KOENIG:

22 Q And so was your ability then to find more recent
23 data is very limited because of that?

24 A Yes. It definitely dissuaded me. I was, I am
25 not -- this is -- I am not going to pursue this, this

1 specifically as a topic any further. So I didn't.

2 Q Going back again to defendant's exhibit R 2 and to
3 our discussion about the history of race relations in
4 the Richmond Police Department. Are you able to draw
5 any conclusion or tell us what your summary essentially
6 of what your knowledge tells us about residential
7 segregation in Richmond succinctly, and the over
8 policing of black residents by Richmond Police
9 Department.

10 A Yes. So they were a hundred percent connected and
11 they are connected in some this way. Black Richmonders
12 throughout history have had negative interactions with
13 Richmond-based institutions, whether that is the City
14 council, police -- the police are just an extension of
15 that -- because of segregation, because of forced
16 segregation, and also past patterns of just discontent
17 between the police department and black people. There
18 has been a historical discontent between them. And I
19 don't believe that that just ends when a black police
20 chief is sworn in, I believe in 1989, first black
21 police chief, or black officers were hired.

22 Institutions develop character over time. They develop
23 patterns of behavior and that doesn't stop the second
24 that a new person is brought in or some new people are
25 brought in. Also relationships --

1 THE COURT: I am not sure that his area of
2 expertise goes this far.

3 MS KOENIG: Thank you, Dr. Chiles. The Government
4 may have some questions for you?

5 THE COURT: We need to take a recess.

6 (Recess was taken)

7 All right. Let's wait until Mr. Moore gets back
8 in.

9 Come back up to the stand, sir, Dr. Chiles.

10 CROSS EXAMINATION

11 THE COURT: All right. Cross examination,
12 Mr. Gibbons?

13 BY MR. GIBBONS:

14 Q Good morning, Dr. Chiles.

15 A Good morning.

16 Q You wrote last year in your Here We Go Again
17 article "That Richmond is 'a City seeking to end its
18 complicity with American racism,'" didn't you?

19 A Yes.

20 Q And Richmond has changed quite a bit in the last
21 fifty years?

22 A Yes.

23 Q And in fact it is becoming far less segregated,
24 maybe let me rephrase that, far less racist?

25 A Yes.

1 Q And significant progress has been made, especially
2 since 1977 when African-Americans were more fully
3 involved in City Government?

4 A Progress as in what?

5 Q Racial progress.

6 A As in what exactly? Like, I mean, I want to
7 answer the question.

8 Q Sure. Well being of African-Americans in
9 Richmond.

10 A In like what?

11 Q I will move on.

12 A Thank you.

13 Q And over the course of the last 50 years the
14 distribution of where people live in Richmond,
15 specifically races living in Richmond has changed
16 significantly?

17 A Yes.

18 Q So, before the 1960s blacks were concentrated in
19 the City's core in the east end?

20 A Yes.

21 Q And since then blacks predominantly in the
22 northern part of City center, eastern part of the City
23 center and the southern part of the City center,
24 correct?

25 A Say that last part again. I am sorry.

1 Q Blacks have now been dispersed --

2 A Yes. Sorry, I'm sorry, yes.

3 Q -- into the north, east and south parts of
4 Richmond; is that correct?

5 A Yes.

6 THE COURT: Well, I think he testified that
7 dispersal of blacks to this area occurred over time.

8 MR. GIBBONS: Yes, Your Honor.

9 THE COURT: Okay.

10 BY MR. GIBBONS:

11 Q In fact, you wrote in your masters thesis that the
12 percentage Richmond population fell below 15 percent in
13 the 1990s?

14 A Population.

15 THE COURT: Of what?

16 MR. GIBBONS: White people in Richmond, Your
17 Honor.

18 THE COURT: Well, fell below 15?

19 MR. GIBBONS: Fifteen percent.

20 BY MR. GIBBONS:

21 Q Let's look at your thesis at page 117.

22 THE COURT: What number is that?

23 MR. GIBBONS: I don't know what the defendant's
24 exhibit number is.

25 MS KOENIG: It is exhibit number --

1 THE COURT: I can't hear you.

2 MS KOENIG: Sorry.

3 THE COURT: Is that 11?

4 MR. GIBBONS: Yes, Your Honor, defendant's exhibit
5 11.

6 THE WITNESS: Is it 115?

7 MR. GIBBONS: 117, I'm sorry. Looking at last two
8 lines of page 117.

9 THE WITNESS: Yes, I guess I did.

10 THE COURT: Well, what you meant to say was
11 45 percent, isn't that right?

12 THE WITNESS: Yes. Yes. I mean --

13 THE COURT: That is a typographical error. Cross
14 examination is more useful than that.

15 MR. GIBBONS: Sure, Your Honor. So just to be
16 clear you your masters thesis says, as of 2014 whites
17 made up 44 percent of City residents. This rise from
18 below 15 percent in the 1990s?

19 THE COURT: It is a typographical error. He
20 obviously meant to say 45 percent. Move on.

21 BY MR. GIBBONS:

22 Q So what was the percentage of blacks?

23 THE COURT: Let's move on.

24 MR. GIBBONS: I'm sorry, Your Honor. I just
25 wasn't sure what the percentage is.

1 THE COURT: Well, he meant to say below

2 45 percent; is that right, Dr. Chiles?

3 THE WITNESS: Yes. So there is one thing I don't
4 have the, what do you call it, the census data in front
5 of me, so I can't say definitively.

6 BY MR. GIBBONS:

7 Q So if it was 44 percent in 2014, and that was a
8 rise from what it was in 1990s, I'm trying to
9 understand what it was in the 1889s.

10 A I don't have that information directly in front of
11 me.

12 Q Okay.

13 But since 2010 there has been a gentrification
14 movement of whites moving back into the City of
15 Richmond?

16 A Yes. Absolutely.

17 Q That wouldn't have been reflected in defendant's
18 exhibit R 2 that relied on the census data from 2010?

19 A It should have been reflected. It should have
20 been yes.

21 Q So when you talk in your expert report on page
22 four about a gentrification movement of 2010s, that
23 would reflect gentrification from 2010 to 2020?

24 A Roughly speaking, yes.

25 Q Is that gentrification movement occurring up until

1 2022?

2 A Yes. Absolutely.

3 Q So census data from 2010 wouldn't reflect a
4 significant influx of white residents that occurred
5 from 2010 to 2022?

6 A I guess it depends on when it is collected.

7 Q As whites have moved back into Richmond that has
8 changed the distribution of whites in the City of
9 Richmond?

10 A Yes, absolutely.

11 Q So if RPD was trying to align precinct boundaries
12 with where the defendant races congregate would be
13 somewhat of a moving target; is that correct?

14 A Say that question again. I am sorry.

15 Q If RPD was trying to align precinct boundaries
16 with racial residential boundaries it would be a moving
17 target because the demographics of Richmond are
18 constantly changing?

19 A Not constantly changing enough, no. Again, since
20 the '70s, I mean you can look at the map, it says 2010
21 map, which was previously shown, the majority of black
22 people still live in the same areas that they did
23 prior, right? So, yes, there is some dispersement,
24 there are some blacks who have moved to the suburbs,
25 there are some blacks who have moved to the west end,

1 but by and large these areas are still identifiably
2 that of same race.

3 Q Again, there has been a significant influx of
4 white since 2010 not reflected in the census data that
5 would change those boundaries?

6 A Yes, significant influx of whites, but that
7 doesn't change the -- that has not, at least from the
8 data that we have. I believe that the dot map data for
9 2020 hasn't been released. I tried to get it for my
10 book and I can't secure it from anyone. But, again,
11 the amount of white distribution throughout the City
12 has not changed the racial integrity of the City at
13 all, at least based upon where the majority of the
14 races of people live.

15 Q You don't have an idea what precinct boundaries
16 looked like in 1977?

17 A In 1977, no, I do not.

18 Q You don't have any idea what changes, if at all,
19 have been made to the precinct boundaries since '77 to
20 the present?

21 A I have seen precinct boundary maps that were shown
22 to me at a previous date. I don't have -- I can't map
23 it out for you, but I have seen it.

24 Q The current precinct maps?

25 A Yes.

1 Q The historical precinct map you have no idea?

2 A The historical precinct maps, I have not looked at
3 those, no.

4 Q So you don't know one way or the other if the
5 precinct boundaries in the past have tracked racial
6 boundaries?

7 A I can't speak to that at all, no.

8 Q You don't have any evidence that Richmond has ever
9 changed a precinct boundary in response to shifting
10 racial demographics in Richmond?

11 A Police precinct map, no.

12 Q And RPD is not involved in residential
13 segregation; is that correct?

14 A As far as actually segregating people, no, they
15 are not actually segregating anyone.

16 Q And they haven't been for a very long time, if at
17 all?

18 A Since -- no, they are not. They are not, you
19 know, there is no Jim Crow laws for them to enforce on
20 the books, if that is what you are asking. Then, no.

21 Q So just to make the point, so whatever racial
22 segregation that exists within Richmond isn't a choice
23 of individuals, market forces, real estate market, and
24 decision by policy makers external to RPD.

25 A To a large extent yes.

1 Q You are not familiar with Richmond City crime
2 rates, are you?

3 A I have seen crime data from the '80s. I secured
4 some from the state, state police department in 2015,
5 2016, sorry, secured some. I have seen it, but I am
6 not familiar with it. I can't spit out facts for you,
7 no.

8 Q And wouldn't know one way or another if RPD is
9 deploying its police report in response to crime rates
10 and calls for services?

11 A No.

12 I don't have access so that either.

13 Q I want to talk to you about a quote in your
14 report. You wrote -- let me get the page number here.

15 This is pages 11 and 12 in your report.

16 MS KOENIG: If I could approach and show him a
17 copy of the report.

18 THE COURT: Go get it from her.

19 THE WITNESS: Yes.

20 BY MR. GIBBONS:

21 Q So the last few words of page 11 and going to page
22 12?

23 A Yes.

24 Q You wrote, "With plans to repopulate the City with
25 monied whites in view of the suburban sprawl in the

1 post World War II period the new police strategy as
2 dictated by black political leaders insure that it will
3 'that that' it will not take long for the neighborhoods
4 to recognize the increased police presence and more
5 aggressive enforcement" in the City's blackest area.

6 Is that what you wrote?

7 A Yes, I wrote this.

8 Q So just to be clear, you interpret the effort to
9 increase crime enforcement in high crime areas as an
10 attempt to repopulate the City with monied whites?

11 A Yes, I do equate the two. In the 1980s
12 specifically because, with the downtown redevelopment
13 plans, the revitalization plans, the Sixth Street
14 Market Place, that is the one that had the most
15 activity on the crime front, business leaders were
16 responding to the City and to non profit organizations,
17 Richmond Renaissance being one, crime is a problem in
18 Richmond. And that, that, these reports that are at
19 VCU today, you can go look at them, those complaints
20 about crime correlate directly with urban
21 revitalization in the 1980s. So I would say that is
22 not by happenstance. That more crime enforcement
23 happens in black neighborhoods just as the City is
24 desperately trying, one building, new infrastructure to
25 recruit whites suburbanites back to the City, to be

1 residents and more so consumers.

2 Q Sure. And you didn't consider the possibility at
3 all that crime enforcement is increasing in these high
4 crime areas so that the minority is living in those
5 areas aren't deprived of the benefit of law
6 enforcement?

7 A I didn't rule that out, no.

8 Q You didn't even consider that. You didn't put
9 that in your expert report?

10 A No, the report, the report, the report that I
11 wrote, it was designed to investigate is there a
12 connection between racial segregation and the
13 relationship between black people and the police
14 department. So, based upon what I got, that is what I
15 put in the report.

16 Q So that alternate explanation for the phenomenon
17 that is occurring wasn't within what you are were
18 trying to say in the report, so you didn't include it?

19 A Not trying to say, but more so making the
20 connection between what is the relationship
21 historically between black people in Richmond and
22 segregation and the police. Is there a connection
23 between the three? Between the three. And this is the
24 connection that I found. Wasn't that I was trying to
25 say this, it was, this is what the evidence showed,

1 revealed itself to be.

2 THE COURT: I don't think it's an alternate
3 explanation. An additional reason.

4 BY MR. GIBBONS:

5 Q Okay.

6 A I go back to the report, again on page 12, a few
7 lines down. You wrote, "This late 20th century
8 development" and my parenthetical is increased
9 policing, "was tied directly to RPD history of being
10 sicked on black people as Richmonders, both new and
11 old, long understood this to be their primary function
12 above all else."

13 Did I read that correctly?

14 A I'm sorry. You said page 12?

15 Q Yes.

16 A Is that in the conclusion?

17 Q The second to the last sentence before the
18 conclusion.

19 Starting with "This late 20th century
20 development?"

21 A Yes, I see it. Got it. What about it?

22 Q So you state that new and old Richmonders have
23 long understood the primary purposes of RPD to be
24 sicked on black people. Is that correct?

25 A Yes.

1 Q Who are these new and old Richmonders who
2 understand this?

3 A The ones that were reflected in Dr. Cei's
4 dissertation, as well as the Richmonders who lived in
5 the mid to late '20th century, the ones who were
6 calling for more policing in the 1980s. And again,
7 like I said, Richmonders in Dr. Cei's dissertation who
8 were, who were, who lived during the 1700 and 1800's,
9 so that is who I considered new and old.

10 THE COURT: So say that again.

11 You say that people, new and old people both
12 considered the purpose of the police to be essentially
13 hassle African-American people; is that what you are
14 saying?

15 THE WITNESS: Yes. That is what I saw in
16 Dr. Cei's report.

17 THE COURT: Do you think that is true? That that
18 is what people see the purpose of police are?

19 THE WITNESS: Today?

20 THE COURT: Well --

21 THE WITNESS: Or back then?

22 THE COURT: Well, I can only speak as somebody who
23 lived through that entire era. Do you think that that
24 is a widely held belief that police exist to make life
25 difficult for African-American people?

1 THE WITNESS: Well, no, that is not their primary
2 function. I don't think that is what people back
3 then -- people, so, because, again, this is a lot of
4 time we are talking about, about back then. Police
5 were designed to protect and serve, right. However, in
6 Richmond, at least in Dr. Cei's dissertation and other
7 newspaper sources, and some archival sources I was able
8 to look at, at the Virginia Museum of History and
9 Culture showed that there was an understanding that
10 police were to work to surveil black areas, were to
11 surveil black people, like -- again, I am not coming to
12 that conclusion independently. Someone else came to
13 that conclusion looking at more data than I had access
14 to. So, that is why I said it.

15 BY MR. GIBBONS:

16 Q Dr. Cei's dissertation was published in 1975?

17 A Yes. I believe it covered years all the way up
18 until right around the year that he defended it.

19 Q So 1737 to 1974?

20 A Yes. There you go.

21 Q How about the last 45 years? New and old
22 Richmonders believed that RPD'S primary purpose is to
23 be sicked on black people in the last 45 years?

24 A Well, based upon what I saw in the '70s through,
25 excuse me, the late '60s into the 80's, a lot of those

1 mentalities didn't necessarily go away. At least at
2 that time period. I can't speak to right now in the
3 present. I can't speak to even the '90s because I
4 didn't write about it because I don't have the data to
5 write about it, so I don't feel comfortable speaking as
6 an authority on it.

7 Q Sure. The defendant was born in 1987.

8 A Okay.

9 Q Anything in his life time that speaks to that
10 point? Do you have any sources or data from the
11 defendant's entire lifetime?

12 A Beyond 1989 I don't have anything. That is why I
13 didn't write about it.

14 Q That is true not just for this one specific point.
15 That is true of your testimony generally, since 1989
16 you really can't point to any data to demonstrate some
17 kind of racial impact of policing or problems you are
18 discussing.

19 A No.

20 THE COURT: Well, is there a phenomenon that once
21 people start to do something they pretty much keep
22 doing it?

23 THE WITNESS: Instructional character, yes. Right
24 before recess I was getting to that. Institutions are
25 made up of people. People have habits. And

1 institutions develop a character, develop a pattern of
2 behavior and a pattern of doing things. Again, that
3 doesn't stop just because one -- more people come in.
4 Think about the 1977 election when black leaders get
5 elected to run the City. Their mentality about running
6 the City in large part was the same as the old. We
7 need to recruit white suburbanites back to the City.
8 The previous administrations had done it through
9 annexation, done it through building malls along the
10 perimeter City. But the point is the agenda was still
11 the same in large part. So that is because that
12 institution, that being City council, it developed a
13 character over time. That even though there are new
14 people in that role, or in that position, it is still
15 active in that, so active the way it acted years
16 before. Not all the way through. But in many ways
17 they still did it. So institutional character, yes,
18 that is a thing.

19 THE COURT: And when people come and join an
20 institution the customs and mores of that institution
21 that they learned they learn from people who were there
22 before them.

23 THE WITNESS: Yes, absolutely.

24 THE COURT: So, if there was a sense that we need
25 to clean up crime in black communities, focus our

1 efforts there, that is a belief that is passed down
2 from captains to lieutenants to sergeants and new
3 patrol officers.

4 THE WITNESS: I would assume so.

5 THE COURT: Well, don't assume anything. I am
6 asking if that is your opinion.

7 THE WITNESS: Yes, that is my opinion, yes. I am
8 not sure that that is a historical opinion.

9 MR. GIBBONS: I was going to say, Your Honor, it
10 seems more of an intuition that some kind learned or
11 trained observation.

12 THE COURT: I tried a bunch of discrimination
13 cases in my life, and there is a phenomenon of
14 discrimination cases, called "similar-to-me" phenomenon
15 in which institutions that have presumably unbiased
16 ways of hiring people wind up hiring the same people
17 over, and over and over again because the people who
18 run them are most comfortable having people who are
19 just like them, and bringing along people just like
20 them to run the institution. So it doesn't change as
21 dramatically as perhaps the written policy might
22 dictate.

23 MR. GIBBONS: I think that is rebutted, Your
24 Honor, by the massive change in City and police
25 leadership from 1977 to the present.

1 THE COURT: Well, only, it's only rebutted to the
2 extent that the police leadership, police leadership
3 may not think we ought run black people out of Richmond
4 like the old police, like the old City police. But if
5 the police leadership continues to have the feeling we
6 need to send massive numbers of police into black
7 areas, that is a belief that could be passed along. It
8 may well be that they have, they can look at the amount
9 of crime in black areas and decided, you know, there is
10 people over here who deserve to live here without
11 living in an area that is highly criminal. And they
12 say, send police officers over there. But I don't have
13 any evidence about why the police are sent anywhere in
14 the City right now.

15 Maybe I will at some point. But I don't right
16 now.

17 MR. GIBBONS: Well --

18 THE COURT: I would have thought you would have
19 called the police officer, somebody from the police
20 department that would have said, here is why we have a
21 lot of police over there where this poor fellow got
22 arrested.

23 MR. GIBBONS: I think Dr. Smith testified about
24 that extensively, Your Honor.

25 THE COURT: Dr. Smith didn't testify to anything

1 about that. Dr. Smith's main point of testimony is
2 that you can't believe any of the numbers.

3 MR. GIBBONS: He also testified extensively that
4 it is a common practice of law enforcement nation wide
5 to send police where the crime is.

6 THE COURT: Well, but he didn't say anything about
7 Richmond. All right. Go ahead. I just -- I am -- I
8 was puzzled why we don't have the precinct, whoever
9 makes -- probably wouldn't be good idea to call the
10 police chief given what happened to him -- but I am
11 just surprised that you all didn't call somebody who
12 said, here is why we have all of these police officers
13 over there. Because there are innocent people who live
14 over there, and people that are trying to turn north
15 side, Highland Park into a nice area. And the police
16 are over there to help those people. But I don't have
17 that.

18 MR. GIBBONS: We thought we had adequately covered
19 that ground with Dr. Smith.

20 THE COURT: Maybe you did. I will have to go back
21 and read all that.

22 MR. GIBBONS: Your Honor, that is why we put in
23 these maps. Dr. Smith indicated to us privately that
24 we put these citations in our brief and our motion to
25 exclude Dr. Chiles, that these murder and homicide, and

1 manslaughter rates are really a decent proxy for crime
2 rates generally. And that's why we put in the maps to
3 show where crime is occurring in Richmond.

4 THE WITNESS: I understand that is where crime is
5 occurring, but I don't understand -- go ahead. Doesn't
6 seem to me that what happened to this gentleman over
7 here was related to manslaughters in north side.

8 MR. GIBBONS: Well, we can get into that in
9 argument.

10 THE COURT: I expect we will hear a lot about
11 that.

12 BY MR. GIBBONS:

13 Q Right.

14 So, Dr. Chiles, I want to go back to your report
15 another line in your report, page 11th, the first full
16 paragraph, the second sentence starting with "this
17 plan, however." Opinion page 11th, full paragraph
18 beyond that sentence.

19 A I see it.

20 Q You wrote in your report, "This plan, however,
21 relied heavily on explicit calls from City businessmen
22 for RPD to increase policing of black neighborhoods."
23 Did I say that correctly?

24 A Yes, you did.

25 Q And this plan you are referring to is kind of a

1 development plan; is that correct?

2 A Yes, there were several plans or surveys that were
3 taken throughout this time of various areas where City
4 businessmen were interested in investing in residence
5 -- not residence, excuse me -- properties, business
6 properties adjacent to downtown malls. So, yes. There
7 were several plans that came up during this time period
8 and, yes, so that is what I was referring to.

9 Q You talk about explicit calls from City
10 businessmen for RPD to increase their policing of black
11 neighborhoods?

12 A Yes.

13 Q And in support of that proposition you cite some
14 census records from Jackson Ward; is that correct?

15 A Yes.

16 Q Note 49?

17 A Yes.

18 Q If we could pull up Government 5 G, or excuse me,
19 Government's exhibit 5.

20 Dr. Chiles, just looking through these records, is
21 this --

22 THE COURT: That is this blue thing?

23 MR. GIBBONS: Yes, Your Honor.

24 THE COURT: Okay. Thank you.

25 BY MR. GIBBONS:

1 Q Is this the source you cited, summary file 3 G?

2 A Yes.

3 THE COURT: Hold on. What are we looking at?

4 What page on this?

5 MR. GIBBONS: Just generally, Your Honor. We are
6 just looking through it so far.

7 THE COURT: Okay.

8 BY MR. GIBBONS:

9 Q And Government's exhibit 5 shows various figures
10 about Jackson Ward. So that includes telephone
11 availability, the type of heating fuel used in homes,
12 and the type of transportation residents take to work?

13 A Yes.

14 Q And this is the main source you cited to support
15 your quote, "Explicit calls from City businessmen for
16 RPD to increase their policing of black neighborhoods,"
17 is that correct?

18 A Yes.

19 THE COURT: I'm sorry. I am looking at this
20 exhibit. Where does it say something about police
21 business people calling?

22 MR. GIBBONS: That is my question, Your Honor.

23 THE WITNESS: Yes. So I responded. When I did
24 get your comment back on the report initially, I did
25 respond saying, hey, this is not one of the sources I

1 should have put in, I actually did put in -- I
2 submitted other sources to validate that. So I pulled
3 this directly from, or these sets of sources directly
4 from my book, a project that I was working on at the
5 time, and this report was also compiled in around two
6 weeks time, so I think two or two and a half weeks
7 time, there was a mistake with submitting this in the
8 footnotes as opposed to other reports about crime in
9 Jackson Ward and business leaders saying we need more
10 patrolling and policing there. So that was a mistake.

11 Q So this is a pretty provocative claim, I believe,
12 in your report and you clearly don't have any evidence
13 to support that claim?

14 A I said that, I submitted that, and I said that,
15 and sent that into her immediately after I got your
16 response. I did give that source material up. I don't
17 have it in front of me right now, but I did send that
18 in.

19 THE COURT: So what he said was, you pointed out
20 to him that this doesn't support what he says, so he
21 sent in additional evidence.

22 MR. GIBBONS: I haven't seen any additional
23 evidence, Your Honor.

24 THE COURT: He said he cited it to you in some
25 sort of letter or something.

1 MS KOENIG: This is in ECF number 107 and page
2 eight. This is --

3 THE COURT: All right. Well, okay. You can point
4 that out.

5 MS KOENIG: I will do that.

6 BY MR. GIBBONS:

7 Q Dr. Chiles, since 1977 there has been pretty
8 significant representation of African-Americans within
9 City Government?

10 A Absolutely.

11 Q And the chief of police, not currently, but on
12 December 5 of 2020 was African-American, correct?

13 A Yes.

14 Q Is it your testimony that all or nearly all of
15 City leaders since 1977 have intended to discriminate
16 against African-Americans?

17 A Have intended to discriminate? Professionally I
18 can't speak to that. Personally I would assume no.

19 Q Is it your testimony that Henry Marsh intended to
20 discriminate against African-Americans during his
21 involvement with Richmond City leadership?

22 A No, he did not.

23 Q Is it your testimony Doug Wilder intended to
24 discriminate against African-Americans during his
25 tenure in Richmond City leadership?

1 THE COURT: I think it is difficult for anyone to
2 speculate about the intention of politicians, in
3 particular the one you just mentioned.

4 BY MR. GIBBONS:

5 Q Same question for Tim Kaine?

6 A Intention, no. I do not think they intended to
7 discriminate against black people. No, I do not.

8 THE COURT: I just don't -- intent is an element
9 of the case, you are absolutely right about that. I am
10 not sure that the mayors of the City of Richmond are
11 the people that -- it is hard to speculate about what
12 they intended because, as we all know, politicians have
13 many motives.

14 MR. GIBBONS: To lay the foundation, Your Honor,
15 there needs to be a connection between what happened
16 long past, the recent past, and 2020.

17 THE COURT: I see your point. The question is
18 whether the police officers who were working when this
19 gentleman was arrested, the police department at that
20 time was a weapon of oppression. That is really what
21 they are saying.

22 I mean, I think that is a tough burden to carry.

23 BY MR. GIBBONS:

24 Q Dr. Chiles, are you aware that RPD has issued
25 several general orders that apply to all police

1 officers that forbid discrimination on basis of race?

2 THE WITNESS: I know that now. I didn't know that
3 prior to today. No, I did not.

4 Q And are you aware --

5 THE COURT: Well, you know, I understand that
6 orders are entered. I used to represent a lot of
7 police departments. And I know that orders don't tell
8 the whole story. I presided over a lot of
9 discrimination cases of companies that have anti
10 discrimination policies that really don't get followed.
11 You are absolutely right, there is a paper trail that
12 says we are not going to discriminate. That, I don't
13 think that -- that is an element, but not the whole
14 story. And I think -- and I don't think you are
15 implying that.

16 MR. GIBBONS: Correct.

17 No further questions.

18 THE COURT: Okay. Thank you.

19 Do you have any brief redirect?

20 REDIRECT EXAMINATION

21 BY MS KOENIG:

22 Q Briefly, Your Honor.

23 Dr. Chiles on direct or cross examination you were
24 asked about gentrification of Richmond since 2010.

25 A Yes.

1 Q When talking about gentrification and whites
2 moving into the City, are there specific areas that you
3 have in mind?

4 A Yes. From what I understand the south side areas,
5 Blackwell area, also Church Hill. South Church Hill
6 northward. Those are places where whites are moving
7 in, or have moved in in significant numbers.

8 So these are places that come to mind immediately.
9 Also, some around the north side area near Virginia
10 Union. But those are just places that have come up in
11 the research I have done for my book projects where
12 gentrification not only has happened but is currently
13 happening.

14 Q When you were doing your research in the '70s
15 about the Richmond Police Department and including
16 looking into trying to get information from the
17 Richmond Police Department, never came across any
18 precinct plans or anything like that, right?

19 A No.

20 Q And in terms of asking about the other sources
21 that you, that Mr. Gibbons was just asking about, that
22 you provided to me once we reviewed the second motion
23 in limine to exclude your testimony --

24 A Yes.

25 Q -- as it relates to the footnote that Mr. Gibbons

1 referred to in your report --

2 A Yes

3 A -- you gave --

4 A Yes.

5 Q -- you gave to me a number of citations, right?

6 A Um hum.

7 Q Is that a "yes?"

8 A Yes.

9 Q And --

10 A I'm sorry.

11 MS KOENIG: Your Honor, this is page, or ECF 107
12 page eight.

13 So, for instance, you indicated specifically the
14 table of reported offenses 1976 to 1980, 2nd Street
15 area, Richmond 1980, and all of those sources that are
16 listed in that filing, those came directly from you,
17 right?

18 A Yes.

19 Q Okay.

20 When we are talking about the evidence that you
21 came across in the past of when the Richmond Police
22 Department did start targeting whites for crimes, I
23 think you mentioned like prostitution and alcohol
24 violations, drug violations, when whites were targeted
25 by the Richmond Police Department, what was the

1 response?

2 A They didn't like it. They did not like it and
3 actually wanted to scale back on police funding and
4 supporting for the police. This happened again during
5 the, around the turn of the century in the middle of
6 the progressive era, at least as indicated by Dr. Cei's
7 dissertation.

8 Q That is what happened, right --

9 A Yes.

10 Q -- the outcry resulted?

11 A Yes.

12 Q No further questions, Your Honor.

13 Thank you.

14 THE COURT: All right.

15 May this witness be excused?

16 MS KOENIG: One moment. He may.

17 THE COURT: Do you have any need to keep him,

18 Mr. Gibbons?

19 MR. GIBBONS: No, Your Honor.

20 THE COURT: All right.

21 Dr. Chiles, thank you very much for coming today.

22 Very interesting to hear you. And you are going back
23 to Old Dominion today?

24 THE WITNESS: Yes, sir, I am.

25 THE COURT: Teaching a class today?

1 THE WITNESS: I canceled class. They got off
2 lucky, but I didn't.

3 THE COURT: Well, good for them.

4 Well, have a safe trip, and thank you very much
5 for coming.

6 THE WITNESS: Thank you very much.

7 THE COURT: Do you have any other witnesses?

8 MS KOENIG: I have none, Your Honor.

9 THE WITNESS: Does the Government have any
10 witnesses.

11 MR. GIBBONS: No, Your Honor.

12 THE COURT: Okay. I had gotten some sort of a
13 word from someone that you were going to have a witness
14 today?

15 MR. GIBBONS: Well, Your Honor, we weren't sure if
16 the maps would be stipulated to.

17 THE COURT: Okay.

18 MR. GIBBONS: So we had the Special Agent on hand
19 to testify if a situation came in. We don't need him.

20 THE COURT: All right. Thank you. All right.
21 Well, then all the evidence is in.

22 MS KOENIG: Yes.

23 (The witness stood aside)

24 THE COURT: So, here is what I would like you to
25 spell out for me, Ms Koenig.

1 As I read the cases you have got to prove two
2 things. One is the discriminatory intent. And one is
3 the discriminatory effect. And so what you have got to
4 prove is that the way the police department works in
5 Richmond is set up with the intent to discriminate
6 against blacks. And as I read Judge Moon's opinion in
7 the Johnson case he says, and there doesn't seem to
8 have been challenged on appeal, that the percentages
9 then show that there is discriminatory intent.

10 MS KOENIG: It's not just Judge Moon, Your Honor.
11 So I think first going to the prong about the
12 discriminatory effect, I do not think that that prong
13 should be reasonably in dispute.

14 THE COURT: Okay. Let's deal with intent first.

15 MS KOENIG: I bring that up, Your Honor, because
16 there are many many many cases that I cite in the
17 pleadings, and several of those are Arlington Heights,
18 International Board of --

19 THE COURT: I understand.

20 MS KOENIG: Many many cases indicate that blunt
21 statistical evidence of racially disparate impact may
22 be sufficient to prove discriminatory intent of an
23 equal protection claim.

24 THE COURT: So we have got the -- that is your
25 evidence of the intent, and then the effect are things

1 like, it seems to me like you are relying pretty much
2 on the same evidence to show the effect.

3 MS KOENIG: That is why I want to go through the
4 statistical evidence first, Your Honor. We know that
5 77 percent of all of the Richmond Police Departments
6 traffic stops from July 1st of 2020 through December 6,
7 2020 were of black drivers, which means black drivers
8 are 5.13 times more likely to be stopped than white
9 drivers. We know that it is statistically significant
10 that black drivers are going to be arrested and
11 searched more often than expected by chance than white
12 drivers. And those findings are consistent with the
13 Virginia Department of Criminal Justice Services own
14 findings. As well as what RTAP found of the Richmond
15 Police Department data in 2017 and 2018. That
16 specifically found that 75 percent of all people that
17 the Richmond Police Department arrested during traffic
18 stops were black. Meaning that black drivers were
19 30.7 percent more likely to be arrested as a result of
20 a traffic offense than a white driver.

21 And that was consistent with Dr. Smith's, the
22 Government's own expert's report of data analysis from
23 2000. So all the evidence that we have from the last
24 20 years, 20 some years, indicates that black drivers
25 will be stopped by the Richmond Police Department at

1 egregious rates well and above what their percentages
2 in the population.

3 THE COURT: Okay. Let me ask you this question.
4 Suppose Mr. Moore instead of just doing -- what was --
5 did stop him because of a --

6 MS KOENIG: Temporary tag.

7 THE COURT: -- temporary tag? Suppose instead of
8 that he had been driving down Brookland Park Boulevard
9 at 80 miles an hour and they stopped him for that.
10 Would you be arguing in that case that because he is
11 black and they arrested a disproportionate number of
12 black people that I should toss out -- I should say
13 that that stop was unlawful?

14 MS KOENIG: So it's not that -- so, Your Honor, I
15 think the thing is that we have, as I mentioned
16 earlier, we have no evidence whatsoever that white
17 drivers commit less traffic infractions than black
18 drivers. I will fully admit that I could be that white
19 driver driving 80 miles an hour on the interstate,
20 right, and no one pulls me over. No one. I am a white
21 driver with a car seat in the back. Ha ha. I am not
22 the target population for the Richmonder Police
23 Department to pull over.

24 THE COURT: Well, you know, assume for a second he
25 committed some sort of egregious violation and was

1 pulled over for that. And that it wasn't just a bad
2 license plate violation. Suppose it was some sort of a
3 really bad violation and they pulled him over.

4 Would I be able to toss out his arrest that arose
5 out of that because the police are unfair to black
6 people?

7 MS KOENIG: Your Honor, I think this argument is
8 the strongest when we are talking about relatively
9 minor traffic infractions.

10 THE COURT: Your argument?

11 MS KOENIG: Yes.

12 THE COURT: I agree with that.

13 MS KOENIG: So I am not -- I don't have -- I can't
14 say at what point in the future I might ultimately say
15 something, but at this point, Your Honor, I think the
16 evidence is strongest for this type of a challenge when
17 we are talking about relatively minor traffic
18 infractions.

19 THE COURT: Okay.

20 MS KOENIG: And so in terms of -- I think that the
21 discriminatory effect on how traffic laws are being
22 enforced against black drivers in the City of Richmond
23 is apparent. And not just apparent but blatantly
24 apparent. I think the discriminatory effect category
25 or element is satisfied.

1 When we get to the discriminatory purpose, as
2 numerous cases have indicated it is not easy, you know,
3 it is, I can't, I couldn't find a case in which we have
4 a member of the law enforcement agency that is being
5 challenged that comes in and says, oh, yes, that is
6 right, oh, we are discriminating against people.

7 THE COURT: So what you need to find is a law
8 enforcement officer who has been terminated, who has
9 been given the order. That is how these kind of things
10 get proved.

11 MS KOENIG: Well, it doesn't have to be --

12 THE COURT: You have a Quisling in their ranks.

13 MS KOENIG: But that is not what we have, what we
14 have to rely on here, Your Honor. When we are looking
15 at, you know, the Iron Workers Local 86 case from the
16 Ninth Circuit that I cited, which has since the passage
17 of the Civil Rights Act of 1964 courts have frequently
18 relied upon statistical evidence to prove a violation.
19 And that is because in many cases the only avenue
20 available of, or only available avenue of proof is the
21 use of racial statistics to show what is happening.

22 THE COURT: Well, that is because people are smart
23 enough not to say go arrest more blacks.

24 MS KOENIG: We are not back in the 1960's where it
25 was freewheeling able to say whatever they wanted,

1 right? People get charged with things like that.
2 People get found to be in violation. And what we are
3 talking about is a civil rights problem of a different
4 magnitude. Right. So we have blunt statistical
5 evidence that is well sufficient in this case to show
6 that we have met our burden under Arlington Heights to
7 show that there is a discriminatory purpose. We also
8 have extensive history about how residential
9 segregation came to be in Richmond. And it is not when
10 you line up the map, when you compare Government's
11 exhibit, I mean defendant's exhibits 20 to defense
12 exhibit R 2, white part is precinct three. Two, four,
13 one are the black parts of town. We heard today, and
14 in Dr. Chiles's report, and in the articles that he has
15 written, that we have explicit and long-term evidence
16 of racial animosity as to why people are living in
17 those areas. When we look at the Mission Team, Fourth
18 Precinct Focus Mission team has testified on July 26 of
19 2021 at pages 23 and 24 of the transcript, they are not
20 out to do traffic enforcement. Their job is to try to
21 get guns and drugs off the street. But they are using
22 minor traffic violations to pull over black drivers to
23 search for evidence or serious criminal activity.

24 THE COURT: But the Supreme Court says they can
25 use minor traffic violations to do that. You and I may

1 disagree with that, but they can't use to add the
2 additional factor in of race.

3 MS KOENIG: So interestingly enough, when we look
4 at the case in which the Supreme Court said that that
5 is allowable, there was nothing like the body of
6 evidence in that case that is before this court. But,
7 what we have in this case is we have months and months
8 and months of evidence, and years and years and years
9 of evidence, showing that what the Richmond Police
10 Department does is pull over black drivers. And we
11 also know where these stops are happening is incredibly
12 important. We have clusters of black drivers that are
13 stopped all over the City. But clusters of white
14 drivers are only happening in the third precinct. And
15 then we have the clusters of black driver stops that
16 are happening where the black and white parts of town
17 meet together. It is so incredibly telling. Why is
18 that happening? We have proffered an explanation that
19 that it is policing the borders. And we don't have any
20 other evidence to indicate that is not the case.

21 THE COURT: Well, you do. I mean, they have all
22 of these police officers in the sections of town that
23 Mr. Gibbons pointed out to us are where all the
24 homicides are happening.

25 MS KOENIG: Some of the homicides are happening,

1 yes, Your Honor.

2 THE COURT: You can look at the map. It's not
3 just some of them. You know, you don't have a lot of
4 homicides in Windsor Farms.

5 MS KOENIG: That is why it is so important I think
6 to look at Government's six and seven as it relates to
7 the figures that are in defendant's exhibit two, which
8 is Dr. Costin's report. Specifically, when you are
9 looking at figure two and you see that -- that there
10 are many clusters of black drivers that are stopped in
11 the third precinct in white neighborhoods. Why? If
12 the police are not over-patrolling those areas because
13 there is no homicide happening, why do we have that
14 happening? When you look at the area where the
15 clusters are in the fourth precinct, which is where
16 Mr. Moore was stopped, and we see that there are huge
17 cluster areas, those are not in the same areas where
18 these murders are happening.

19 We have these cluster maps that show us that where
20 the clusters are often happening sometimes it is in
21 areas that the murders are happening, absolutely, but
22 how do we explain the ones that aren't but for race?

23 THE COURT: Go ahead.

24 MS KOENIG: What we also have is, we have I think
25 what the Government is doing is running from the

1 obvious answer. What Dr. Smith tried to do was
2 basically say that in no circumstance would he ever
3 advise a law enforcement agency that they were acting
4 in a biased manner. But if he found evidence of
5 statistical disparities he might advise them they need
6 to to some training to let their officers know that
7 they need to start treating people of different races
8 more equally.

9 So, the burden is initially on us, the defense, to
10 show that the discriminatory purpose was a motivating
11 factor. Here the evidence is so explicit in terms of
12 the statistical evidence when we line that evidence up
13 with how the precincts are mapped out, and we compare
14 that to the racial, residential racial segregation in
15 Richmond. So the burden then shifts to show the same
16 decision would have resulted even had the inexpressible
17 purpose not been considered. And the Government hasn't
18 done a single thing to show that.

19 So at this point, Your Honor, I believe that you
20 have to rule for us. The question I know The Court
21 asked us to consider at the end of the last hearing was
22 what would an appropriate remedy be if The Court were
23 to make such a finding? I believe that The Court,
24 because it's not written in stone, the Supreme Court
25 has left the question open in *Armstrong*. Several

1 circuits have weighed in. Some circuits find dismissal
2 of the indictment is appropriate. Other circuits and
3 other district courts with have found that suppression
4 of the evidence is the appropriate remedy. If The
5 Court feels that a more creative remedy is appropriate,
6 we are happy to consider that. But the remedy has to
7 be within the context of this case.

8 THE COURT: Right.

9 MS KOENIG: So that is where we are. I think that
10 the -- we have met our burden, and that The Court
11 should so find.

12 THE COURT: Okay. Thank you. It would be a
13 different story if somebody brought a 1983 case.

14 MS KOENIG: Correct.

15 THE COURT: Then I can enter an injunction.

16 MS KOENIG: Correct. That is not an appropriate
17 remedy in this case.

18 THE COURT: I can't do that here. You would have
19 thought somebody would have done that by now. Maybe
20 somebody will try to figure that out.

21 MR. GIBBONS: So, Your Honor, let me just start
22 before I respond to these points and get into my
23 argument, just review the facts very briefly.

24 So within a four-hour period the Focus Mission
25 Team sees three cars with the exact same license plate

1 number. They pull over the first, I believe it was for
2 a defective headlight. See that the registration
3 doesn't match the car. Give that person a warning and
4 tell them to fix the headlight. Let them on their way.
5 There is no search of the car as the defense has
6 repeatedly claims, there is absolutely no search of
7 that car.

8 THE COURT: Well, they looked in it.

9 MR. GIBBONS: But not a fourth amendment search.

10 Second stop an hour later. They see a second car
11 with a broken window. Same exact license plate.
12 Pulled it over. The mom says she broke the window to
13 get into her car. She locked her kid in the car. Same
14 license plate. Conduct is weird. Gave her a warning.
15 No search. Sent her on her way.

16 Two hours later they see Mr. Moore, same exact
17 license plate. And they know it doesn't belong to his
18 car based on the two prior interactions within four
19 hours. They attempt to initiate a traffic stop. He
20 flees. Goes through three stop signs at a high rate of
21 speed. Crashes his car into the curb and then flees on
22 foot. They find the firearm.

23 So, that is the background. And when Ms Koenig
24 says the Government has not done a single thing to
25 rebut this legitimate law enforcement purpose. I mean

1 that is it. The police officers see a traffic
2 violation. And if there is not just probable cause,
3 they know that there is something wrong with this tag
4 one way or another.

5 Attempt to issue a traffic stop, and here we are.

6 To start with, and just to reiterate, Your Honor,
7 we have pending motions to exclude on both Dr. Costin
8 and on Dr. Chiles. And let me talk about why that is
9 the case, and why neither of those data or their
10 conclusions of their testimony are reliable properly
11 before The Court.

12 THE COURT: Well, I think the Johnston case says I
13 can rely on the data, doesn't it?

14 MR. GIBBONS: If the data is reliable. But we --

15 THE COURT: Yes. Let me just say his explanation
16 of the data being unreliable was hog wash.

17 MR. GIBBONS: Dr. Smith's explanation?

18 THE COURT: Yes. Dr. Smith was simply afraid to
19 testify that the emperor has no clothes.

20 MR. GIBBONS: Talking about the Community Policing
21 Act data or other data, Your Honor?

22 THE COURT: Yes. I Community Policing Act data.
23 You remember he says they couldn't tell what race they
24 were. You know, I may have been born during the day,
25 but it wasn't yesterday.

1 MR. GIBBONS: Well, the point we are trying to
2 make, Your Honor --

3 THE COURT: Well, I believe it was yesterday since
4 it was my birthday. It was yesterday seventy-one years
5 ago.

6 MR. GIBBONS: The point we are trying to make,
7 Your Honor, is that comparing census records which are
8 self -- race is self identified and traffic stop where
9 race is identified by the police officer, it is just
10 apples and oranges. I think that is what Dr. Smith is
11 trying to say.

12 THE COURT: But he says they couldn't tell when
13 they were issuing a ticket what race the people were.
14 He couldn't be sure about it. We have all -- I have
15 had -- Mr. Seibert has brought me a hundred cases where
16 they have identified the race of people, and they don't
17 seem to get it wrong.

18 MR. GIBBONS: Your Honor, it is somewhere -- I
19 would have to look at the data again -- but somewhere
20 between seven and ten percent of that data there is an
21 unknown race checked in the Community Policing Act data
22 for Richmond. So there is some uncertainty, I think
23 there is some hesitation on RPD officers to make
24 decisions in close calls. And I think that is what
25 Dr. Smith was trying to say.

1 THE COURT: Well, go ahead.

2 MR. GIBBONS: We talked about, Your Honor, and we
3 called Kevin Turner, who works at Virginia State
4 Police, and Jim McDonough who works for Virginia
5 Department of Criminal Services, they talked about the
6 rush time line of the Community Policing Act and how
7 quickly this was rolled out, and how haphazard the data
8 collection in those first six months, which is the
9 first five months of data is the data that the defense
10 is relying on to prove that there is some kind of
11 unexplained statistical disparity. We talked about
12 just that the pitfalls and unreliability of data.

13 THE COURT: Well, you are going to have go far to
14 persuade me that 77 percent of the people who are
15 arrested were not black.

16 MR. GIBBONS: Well, the 77 percent of the data
17 collected, that is what data shows.

18 THE COURT: Data collected, you are right.

19 MR. GIBBONS: But, Your Honor, we talked about
20 this and Dr. Costin admitted this during cross
21 examination, if you shift the time line to include the
22 first full year of that data instead of picking five
23 months of the most unreliable data the disparity
24 drops -- let me get this right -- the percentage of
25 blacks that were stopped drops from 77 percent to

1 68 percent; and the percentage of whites that were
2 stopped increases from 14 to 24 percent. So if you
3 include, if you don't cherry pick the date range then
4 the disparity actually drops in half. And if you
5 include the entire --

6 THE COURT: Well, still a pretty big disparity.

7 MR. GIBBONS: It is. And this is where we get to
8 where the Fourth Circuit has repeatedly said some kind
9 of unexplained statistical disparity without more is
10 insufficient as a matter of law.

11 THE COURT: So what the explanation for this?

12 MR. GIBBONS: I think a partial explanation, and
13 that one we know is occurring, is police deployment
14 pattern. That police are being deployed to higher
15 crime areas, which tend to be minority neighborhoods.
16 Now, there is no evidence, again the burden is on the
17 defense to explain these statistical disparities, there
18 is no evidence as to --

19 THE COURT: Wait a minute. You told me that that
20 is how these precincts were set up?

21 MR. GIBBONS: There is no evidence in the record
22 as to how the precincts were set up.

23 THE COURT: How they assign the police officers to
24 go out to those areas?

25 MR. GIBBONS: There is no evidence, Your Honor.

1 But Dr. Smith repeatedly testified police go where the
2 crime is.

3 THE COURT: Well, okay.

4 MR. GIBBONS: We have these maps that show the
5 crime is disproportionately in these minority
6 neighborhoods.

7 THE COURT: I understand what you are saying, and
8 that is the thing that has always bothered me about
9 this case. I mean there are two sides to the coin
10 here. Side one is I have been sitting here for 12
11 years, and I have never had a young white guy come in
12 who has got stopped or making an illegal left turn and
13 they found drugs in his car. Never happened. But, you
14 know, side two is you know people in those communities
15 deserve to live in an area that is safe and to have the
16 police try to find guns.

17 MR. GIBBONS: Right, Your Honor.

18 If could I skip ahead. I was going to talk about
19 this later, but the Ninth Circuit in this, United
20 States versus Turner case, and this is at 104 3d 1180,
21 and the cite is 1185, this is a Ninth Circuit case from
22 1897. The defense in that case made a very similar
23 argument. If the police set up some kind of traffic
24 stop sting operation in Beverly Hills versus south
25 central LA they are going to get different people

1 because they don't patrol in Beverly Hills and they do
2 patrol in south central LA. That there is some kind of
3 over policing, there is going to be some kind of
4 discriminatory impacts or disparities because they
5 police in south central L A. The Ninth Circuit pretty
6 conclusively said that is not discriminatory effect as
7 a matter of law. In fact, they said the defendant's
8 hypothetical, Beverly Hills versus south central LA, is
9 an argument that the minorities of the inner city of
10 Las Angeles must be denied the protection of law
11 enforcement by the Federal Government because the
12 likely subjects are likely to be minorities living in
13 that area. So it can't be the case that enforcing the
14 law in predominantly minority areas is a violation of
15 the Constitution if those minority populations happen
16 to be high crime areas. The Ninth Circuit has plainly
17 said that is not sufficient as a matter of law.

18 So all that we have here is some kind of
19 unexplained statistical disparity. We don't know how
20 much of it is related to policing, how much is related
21 to race, if at all. We just have this unexplained
22 statistical disparity. And the Fourth Circuit in
23 multiple cases, in fact in Hair, Venable, and Orvis
24 have said that unexplained statistical disparity is
25 insufficient as a matter of law.

1 THE COURT: Well, I think the explanation is sort
2 of the opposite of why Willie Sutton robbed banks. The
3 police go where criminals are because that is where you
4 catch criminals.

5 MR. GIBBONS: Right. But Dr. Costin admitted on
6 the stand that none of her work could be interpreted as
7 causation, didn't intend to make any causative
8 arguments. That is one of the key weaknesses of the
9 defense case. They have done nothing to explain this
10 statistical disparity when in fact the law requires
11 them to do that. So we don't know one way or the other
12 what is the cause of this naked statistical disparity.
13 And the defense hasn't put anything in besides
14 proffering of lawyer testimony that the police are
15 enforcing racial boundaries, which there is no evidence
16 of that in the record besides assertions of counsel.

17 So, again, on that point the unexplained
18 statistical disparity, or prohibition on that is the
19 sole evidence of effect and intent, is intended to meet
20 Armstrong's requirement that the defense produce a
21 similarly situated defendant. And there has been no
22 attempt to do that, and the only evidence of that is
23 this unexplained statistical disparity.

24 THE COURT: Well, can you address a different
25 question for me? And it's one I addressed to Ms

1 Koenig.

2 Let's just assume for a second that I find that
3 there is a disparity and intent, but the police see a
4 crime happening. Is the remedy for that to toss out
5 the charge? I mean, suppose the guy was driving down
6 Brookland Park Boulevard at 80 miles an hour. And
7 police caught him. Yet he happened to be a black
8 person and the police were looking for black people.
9 Should I toss out that indictment? I assume they are
10 going to say no. And can you tell me why?

11 MR. GIBBONS: Well, Your Honor, I think she has a
12 legal test correct. It is a burden-shifting argument
13 similar to a Batson challenge. They make a prima facie
14 case -- and we don't think that is met here -- and the
15 burden shifts to the Government to assert legitimate
16 non-discriminatory reasons. And The Court balances
17 those explanations.

18 To that point, Your Honor, The Court, the Fourth
19 Circuit said in Mason that "Where there exists an
20 objectively reasonable basis for the officer's conduct
21 after rigorous challenge it is even less likely that an
22 Armstrong claim would get off the ground."

23 And then a little bit later, "Officers cannot just
24 cease enforcement efforts where there is an objective
25 reason to believe that there has been a violation of

1 the law."

2 An that is exactly what happened here. The police
3 see this fake tag that they have seen three times now
4 in the last four hours, the same officers, same shift.
5 Are they supposed to just let this walk because of the
6 defendant's race? I think the answer is no. That they
7 are required to enforce the law, and in fact that is
8 exactly what they did in this instance. And I believe
9 answers The Court's question.

10 Let me switch gears, Your Honor.

11 THE COURT: Sure. Go ahead. Take your time.

12 MR. GIBBONS: Another important piece here, Your
13 Honor, another failure of the defense's case and their
14 burden is the Supreme Court in McClusky said that the
15 party bringing the equal protection claim must show
16 discriminatory purpose in his case. There has been
17 absolutely no evidence to that effect. There has been
18 no evidence connecting unexplained statistical
19 disparities to the stop on December 5 of 2020, or
20 historical prejudice that occurred many decades ago.

21 THE COURT: Well, I agree with you about
22 annexation and all that stuff that happened back in the
23 '70s. But if I find that there is still a pattern of
24 racially-biased enforcement, are you saying that there
25 is no evidence that the stop of this gentleman was

1 because of that?

2 MR. GIBBONS: Yes, Your Honor. There is no
3 evidence of that. The four officers that were involved
4 in that stop were here. They testified. They gave --
5 this was over a year ago -- they were cross-examined,
6 and there is no evidence of any kind of racial
7 prejudice or anything that some kind of over policing,
8 which we have already addressed, but over policing by
9 itself is not a Constitutional violation. That that
10 somehow touched this stop on December 5, 2020.

11 In fact -- this is another one of Your Honor's
12 questions from the last, from the last hearing. You
13 asked about mixed motives or what happens if there is
14 kind of awareness of discriminatory impact. Or, excuse
15 me, of disparate impact. And that is not enough under
16 Supreme Court case law under.

17 THE COURT: You have to have intent, too.

18 MR. GIBBONS: Right. You have to not just be
19 aware there is an impact or disparate impact, you have
20 to intend that disparate impact to take place.

21 THE WITNESS: In this particular case.

22 MR. GIBBONS: In this particular case. There is
23 just no evidence of that. There is no evidence that
24 Henry Marsh and Doug Wilder, Tim Kaine, they are
25 involved in the through line from '89 to 2020. And it

1 is just inconceivable they would permit, not only
2 permit this but intend this to to take place or allow
3 it to take place within RPD.

4 THE COURT: Well, there is not even any evidence
5 that Mayor Stoney intended.

6 MR. GIBBONS: That is one of the weaknesses of the
7 defense case. There has to be connection to this case,
8 has to be connection that there was intent in this
9 case, and there is simply no evidence of that beyond
10 unexplained statistical disparity.

11 THE COURT: Right.

12 MR. GIBBONS: And just, the implications of the
13 defense's argument is massive. If it's the case that a
14 simple unexplained statistical disparity is enough to
15 get an indictment dismissed without further evidence or
16 connection to this case, then any traffic stop in the
17 City of Richmond is ineligible to proceed to
18 indictment. Because if there is an unexplained
19 statistical disparity here then no indictment can
20 result from any traffic stops. And not just here in
21 Richmond, we heard from Dr. McDonough that Richmond's
22 unexplained statistical disparity in the DCJS report is
23 about middle of the road in the Commonwealth. So this,
24 that the logical import of this argument extends not
25 just to Richmond, but throughout the Commonwealth.

1 That maybe zero traffic stops in the City or in the
2 Commonwealth of Virginia are eligible to be proceed to
3 indictment based on the defenses theory.

4 THE COURT: Or even to give them a ticket.

5 MR. GIBBONS: Give them a ticket, right.

6 And not just the Commonwealth of Virginia, but if
7 you take Dr. Smith at his word that this is really a
8 national problem that goes back decades, really no
9 traffic stops, or no enforcement can occur where some
10 kind of disparate impact has been identified or some
11 kind of unexplained disparity is present.

12 THE COURT: So, what is wrong with that result if
13 everybody, if all the stops, if there is a national or
14 state-wide or City-wide practice of stopping
15 African-American people, why should they be allowed to
16 indict them? Although, the other problem with the
17 whole case is that you are asking me to decide
18 sociological questions that are not legal ones, or
19 maybe they are or maybe they aren't. They say they are
20 legal questions. I think you think they are
21 sociological.

22 MR. GIBBONS: This is really, as Dr. Smith
23 acknowledged on the stand, this is a problem that goes
24 back decades and centuries. And the idea that
25 dismissing the indictment would solve or even address

1 these long-standing and thorny problems being addressed
2 throughout our political branches, that that would be
3 accomplished in one courtroom in Richmond is just --
4 making a ruling in this case, vis a vis, such a blunt
5 instrument for the massive blame that is before our
6 society.

7 Sorry, Your Honor. A little scatter shot.

8 THE COURT: Well, that is okay. I keep asking you
9 questions.

10 MR. GIBBONS: Your Honor, just to go back to
11 repeated Fourth Circuit law. The Armstrong test has
12 been adopted in these types of cases, selective
13 enforcement cases, and the Fourth Circuit in Hair,
14 Mason, Ovis, Venable has created very, very high
15 standards for this type claim to get discovery about
16 and to succeed on. And we believe that standard has
17 plainly not been met here, Your Honor.

18 One moment.

19 THE COURT: Take your time.

20 MR. GIBBONS: Nothing further.

21 THE COURT: Thank you very much, Mr. Gibbons.
22 Good job.

23 MS KOENIG: Your Honor, once the burden shifts to
24 the laws, the action defender, you have to show that
25 the same decision would have resulted even had race not

1 been considered. I don't think that we have any
2 evidence here of that whatsoever. So what we are
3 looking at is in terms of like the dates of the stop,
4 like when, as this court recognized, the numbers are
5 still incredibly high even if you look at the whole
6 year's worth of data, but the reason that we came and
7 stopped at December 6 of 2020 is because if I came in
8 with additional data beyond that everybody would be
9 screaming and yelling about the relevance of the date.

10 THE COURT: Well, that is part, one of the
11 problems with being a lawyer.

12 MS KOENIG: Ha ha ha. So, but what we do know is
13 we do not have any evidence about the police deployment
14 patterns in this case. We do not have -- but what we
15 do have is we have clear evidence about the traffic
16 enforcement in this case. This is a selective
17 enforcement claim, not a selective prosecution claim.
18 And as I talked about several times in the briefing,
19 for example in ECF number 66 at page three, footnote
20 one, the standard is different. We don't have to show
21 a similarly situated defendant when we are talking
22 about a selective enforcement claim as opposed to a
23 selective prosecution claim. They are different than,
24 different considerations that are at play in a
25 selective prosecution claim which we have not brought

1 here.

2 But what we have is we have a pattern, right. A
3 pattern and a practice that all comes together
4 especially when we look at the history that Dr. Chiles
5 testified about.

6 It's not that the police just happened to be in
7 high crime areas. The City designed essentially those
8 places to be areas where you are going to stick blacks,
9 poor people who have been deprived of everything that
10 they otherwise would have been entitled to, and now we
11 are going to stop them over and over again for traffic
12 stops. This is not by happenstance. And Dr. Costin
13 testified that it is policing borders. Not just me
14 standing up here saying that. I wouldn't be able to
15 make that representation. Dr. Costin testified to
16 that. We can see it in the figures. We can see it in
17 the evidence. And I think that one thing that The
18 Court has to also look at is as it relates to this case
19 we know that what ultimately happened pretty quickly
20 within a matter of a few minutes, with the other two
21 people that were stopped for this same license plate
22 number, they were just let go, oh, no issue.

23 THE COURT: Well, they had the good sense to not
24 run off.

25 MS KOENIG: Again, we are talking about the

1 initial part, right. Just the traffic enforcement part
2 of it. Right.

3 So when we get to I think what I take from the
4 Government's argument, this parade is that let's just
5 keep on keeping on with what we have been doing all
6 these years. Let's just keep over, over, over policing
7 the blacks. Let's just let everybody do what they have
8 been doing before. It is just so hard to fix it. It
9 is so hard for us to try to do something that is going
10 to help make things more equal. And that is exactly
11 what the equal protection clause is designed to do, is
12 to force change like it did in the '70s when the Fourth
13 Circuit didn't want to deal, or didn't want to let
14 Richmond just do what they had been doing all along
15 with continued segregation at that point. When does it
16 stop? I think it stops when we have evidence that
17 shows us that we are really more in parity with the
18 traffic stops that have happening. If the ramification
19 is that someone gets pulled for a traffic stop and you
20 have got to find better reasons to try to cite them
21 with a crime, so be it. Right. So be it.

22 And so what we have in this case is we are not
23 just to just keep on keeping on. We are asking The
24 Court to find enough is enough.

25 THE COURT: All right. Thank you.

1 Anything else, counsel, in this case? Do you all
2 want to file more briefs in this case, or have you
3 exhausted your supply of ink?

4 MR. GIBBONS: The government is happy with no
5 further briefing. This has been going on for a very
6 long time.

7 THE COURT: It has been going on for a long time,
8 hasn't it?

9 MS KOENIG: Same here, Your Honor.

10 THE COURT: All right.

11 Well, this is it. A difficult case that raises a
12 lot of difficult questions.

13 Much and it is brings to the forefront something I
14 have been facing ever since I have been a judge, which
15 is why is it that we only have stops in cars with black
16 drivers? And I just don't get it.

17 But it also brings to the front of how do we
18 protect the African-American community? It is a tough
19 question.

20 Do you have anything further to add, Mr. Seibert?
21 I haven't heard from you yet.

22 MR. SIEBERT: No, Your Honor. I would just --

23 THE COURT: Is that a VMI tie?

24 MR. SIEBERT: My alma mater.

25 THE COURT: Well, congratulations.

1 MR. SIEBERT: I was going to add, Your Honor, just
2 I don't know if we covered this, but -- and I don't
3 want to open up anything if Ms. Koenig had to answer,
4 but the maps, right, I would encourage The Court to
5 overlay that on top of the maps --

6 THE COURT: The crime maps.

7 MR. SIEBERT: The crimes maps. The murder and
8 manslaughter, I assume The Court would do to already,
9 but just overlay that across what Ms Koenig provided on
10 the traffic stops. I think there is a correlation.
11 Police officers aren't walking the beat any more. They
12 are all in motor vehicles. So their main area is
13 driving around looking for cars. I mean, that's how
14 they deter crime by presence. Less likely crime to
15 occur when they are patrolling, right. But I think
16 it's very telling. I think, you know, Your Honor made
17 a comment about linking the redeployment or the
18 resource allocation. I think this answers that
19 question. That is the only thing I would add.

20 THE COURT: Thank you, Mr. Siebert.

21 Ms Austin, do you have anything to add?

22 MS AUSTIN: No, Your Honor. Thank you.

23 THE WITNESS: Okay. Thank you. All right. Thank
24 you all very much. And we will have to write an
25 opinion about this thing.

1 Thank you.

2 Good job, counsel on both sides. I appreciate
3 your good work.

4 Let's adjourn

5

6 HEARING ADJOURNED

7

8 THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT.

9

10 GILBERT FRANK HALASZ, OCR

11 Official Court Reporter

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